

# DRAFT FOR CONSULTATION

New provisions are underlined

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Privacy Commissioner  
Te Mana Mātāpono Matatapu

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## Telecommunications Information Privacy Code 2020

This code of practice is made under section 32 of the Privacy Act 2020 by the Privacy Commissioner.

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## Code of Practice

### Part 1 Preliminary provisions

#### 1 Title

This code of practice is the Telecommunications Information Privacy Code 2020.

#### 2 Commencement

This code comes into force on 1 December 2020.

#### 3 Review

The Commissioner will review the operation of Schedule 4 from time to time, and no later than 1 May 2022.

#### 4 Interpretation

(1) In this code,—

**Act** means the Privacy Act 2020

**call** means a telephone call

**call associated data** in relation to a telecommunication,—

(a) means information—

- (i) that is generated as a result of the making of the telecommunication (whether or not the telecommunication is sent or received successfully); and
- (ii) that identifies the origin, direction, destination, or termination of the telecommunication; and

(b) includes, without limitation, any of the following information—

- (i) the number from which the telecommunication originates:

- (ii) the number to which the telecommunication is sent:
  - (iii) if the telecommunication is diverted from one number to another number, those numbers:
  - (iv) the time at which the telecommunication is sent:
  - (v) the duration of the telecommunication:
  - (vi) if the telecommunication is generated from a mobile telephone, the point at which the telecommunication first enters a network; but
- (c) does not include the content of the telecommunication

**CLIP** means Calling Line Identification Presentation, being technology which enables an answerer (or a device receiving a call) to identify the calling number, name of the subscriber and time and date of the call, prior to answering the call or in the course of receiving a message

**CMS** means call management service

**direct marketing** means—

- (a) the offering of goods or services; or
- (b) the advertising of the availability of goods or services; or
- (c) the solicitation of donations or contributions for charitable, cultural, philanthropic, recreational, political or other purposes,

by means of—

- (a) information or goods sent to any person by mail, facsimile transmission, electronic mail, or other similar means of communication, where the information or goods are addressed to a specific person or specific persons by name; or
- (b) calls made to specific persons by name,

but does not include—

- (c) information sent by a telecommunications agency to a subscriber advising of a rate or service change to an existing service; or
- (d) information sent by a telecommunications agency to a subscriber advising of alternative services, or charging plans, which may be of interest to the subscriber as a result of a rate or service change to an existing service

**directory** means a list of the names and contact details of subscribers, whether in printed or electronic form, available to the public or a section of the public

**directory enquiry agency** means an agency which provides a directory enquiry service

**directory enquiry service** means a service which provides subscriber contact details on request

**directory publisher** means an agency which prepares or publishes a directory

**internet service provider** means a service provider which provides access to the internet

**linked traffic information** means traffic information which is linked to, or matched with, subscriber information by a telecommunications agency

**network** has the same meaning as in section 5 of the Telecommunications Act 2001

**network operator** has the same meaning as in section 5 of the Telecommunications Act 2001

**reverse search facility** means a directory which is arranged, or a directory enquiry service which is operated, for the purpose of enabling an individual's name or address to be obtained by a reference to a telephone number alone or an address alone, or a combination of telephone number and address

**rule** means a telecommunications information privacy rule set out in clause 6

**seamless** means the provision of a telecommunications service in such a way that it is not evident to the subscriber that a particular service may be or has been delivered by different networks, equipment or providers

**subscriber** means an individual who has entered into a contract with a telecommunications agency for the supply of a telecommunications service

**subscriber information** means personal information about a subscriber which is obtained by a telecommunications agency when that subscriber subscribes to a telecommunications service or during the term of such a contractual relationship

**telecommunication** has the same meaning as in section 5 of the Telecommunications Act 2001

**telecommunications agency** means an agency of a class listed in subclause 5(2)

**telecommunications information** means information listed in subclause 5(1)

**telecommunications service** has the same meaning as in section 5 of the Telecommunications Act 2001

**telecommunications service obligation provider** or **TSO provider** has the same meaning as in section 5 of the Telecommunications Act 2001

**traffic information** means call associated data and any other dialling or signalling information generated as the result of making a telecommunication (whether or not the telecommunication is sent or received successfully).

- (2) A term or expression defined in the Act and used, but not defined, in this code has the same meaning as in the Act.

## 5 Application of code

- (1) This code applies to information about an identifiable individual that is—
- (a) subscriber information; or
  - (b) traffic information; or
  - (c) the content of a telecommunication; or
  - (d) additionally, for the purposes of Schedule 4, location information as defined in clause 1 of Schedule 4.
- (2) This code applies to the following classes of agency—
- (a) a network operator; or
  - (b) a telecommunications service obligation provider or TSO provider; or
  - (c) a directory publisher; or
  - (d) a directory enquiry agency; or

- (e) an Internet service provider; or
- (f) a call centre which provides call centre services on contract to another agency; or
- (g) a mobile telephone retailer; or
- (h) additionally, for the purposes of Schedule 4—
  - (i) the relevant public sector agency; or
  - (ii) an emergency service provider.

## **Part 2**

### **Telecommunications Information Privacy Rules**

#### **6 Telecommunications information privacy rules**

In accordance with the Act, the following rules modify the application of the information privacy principles, prescribe how the principles are to be applied or complied with and apply some principles without modification:

#### **Rule 1**

##### **Purpose of collection of telecommunications information**

- (1) Telecommunications information must not be collected by a telecommunications agency unless—
  - (a) the information is collected for a lawful purpose connected with a function or activity of the agency; and
  - (b) the collection of the information is necessary for that purpose.
- (2) If the lawful purpose for which telecommunications information about an individual is collected does not require the collection of an individual's identifying information, the telecommunications agency may not require the individual's identifying information.

#### **Rule 2**

##### **Source of telecommunications information**

- (1) If a telecommunications agency collects telecommunications information, the information must be collected from the individual concerned.
- (2) It is not necessary for a telecommunications agency to comply with subrule (1) if the agency believes, on reasonable grounds,—
  - (a) that non-compliance would not prejudice the interests of the individual concerned; or
  - (b) that compliance would prejudice the purpose of collection; or
  - (c) that the individual concerned authorises collection of the information from someone else; or
  - (d) that the information is publicly available information; or
  - (e) that non-compliance is necessary—
    - (i) to avoid prejudice to the maintenance of the law by any public sector agency including prejudice to the prevention, detection, investigation, prosecution and punishment of offences; or

- (ii) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation); or
  - (iii) for the purpose of preventing or investigating an action or threat that may compromise network or service security or integrity; or
  - (iv) to prevent or lessen a serious threat to the life or health of the individual concerned or any other individual; or
- (f) that compliance is not reasonably practicable in the circumstances of the particular case; or
- (g) that the information—
  - (i) will not be used in a form in which the individual concerned is identified; or
  - (ii) will be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
- (h) that the information is traffic information; or
- (i) that the collection is an essential element of service provision or the interconnection, wholesaling or similar arrangements between network operators; or
- (j) that the information is necessary to deal with a service or billing enquiry and the collection is from—
  - (i) a member of the subscriber's household; or
  - (ii) a representative of a business subscriber; or
- (k) that the information is subscriber information and the collection is from a network operator or Internet service provider or any other agency providing telecommunications service to persons outside that agency—
  - (i) by a directory publisher for the purpose of inclusion in a directory in accordance with the requirements of Schedule 2; or
  - (ii) by a directory enquiry agency for the purpose of making the information available through a directory enquiry service in accordance with the requirements of Schedule 2; or
- (l) that the collection of the information is in accordance with an authorisation granted under section 30 of the Act.

### **Rule 3**

#### **Collection of telecommunications information from individual concerned**

- (1) If a telecommunications agency collects telecommunications information from the individual concerned, the agency must take any steps that are, in the circumstances, reasonable to ensure that the individual concerned is aware of—
  - (a) the fact that the information is being collected; and
  - (b) the purpose for which the information is being collected; and
  - (c) the intended recipients of the information; and

- (d) the name and address of—
    - (i) the agency that is collecting the information; and
    - (ii) the agency that will hold the information; and
  - (e) if the collection of the information is authorised or required by or under law,—
    - (i) the particular law by or under which the collection is authorised or required; and
    - (ii) whether or not the supply of the information by the individual is voluntary or mandatory; and
  - (f) the consequences (if any) for the individual if all or any part of the requested information is not provided; and
  - (g) the rights of access to, and correction of, telecommunications information provided by rules 6 and 7.
- (2) The steps referred to in subrule (1) must be taken before the information is collected or, if that is not practicable, as soon as practicable after it is collected.
  - (3) A telecommunications agency is not required to take the steps referred to in subrule (1) in relation to the collection of telecommunications information from an individual if that agency has taken those steps on a recent previous occasion in relation to the collection, from that individual, of the same information or information of the same kind.
  - (4) It is not necessary for a telecommunications agency to comply with subrule (1) if it believes, on reasonable grounds,—
    - (a) that non-compliance would not prejudice the interests of the individual concerned; or
    - (b) that non-compliance is necessary—
      - (i) to avoid prejudice to the maintenance of the law by any public sector agency, including prejudice to the prevention, detection, investigation, prosecution and punishment of offences; or
      - (ii) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation); or
      - (iii) for the purpose of preventing or investigating an action or threat that may compromise network or service security or integrity; or
    - (c) that compliance would prejudice the purposes of collection; or
    - (d) that compliance is not reasonably practicable in the circumstances of the particular case; or
    - (e) that the information will not be used in a form in which the individual concerned is identified; or
    - (f) that the collection is for the purposes of interconnection or the delivery of a CMS.
  - (5) Where a network operator participates in the emergency location information system in accordance with Schedule 4, it must ensure that additional steps required by clause 5 of Schedule 4 are taken to meet specific transparency obligations in relation to the system.

### **Rule 3A**

#### **Collection of telecommunications information other than from individual concerned**

- (1) If a telecommunications agency collects telecommunications information about an individual other than from the individual concerned, the agency must take any steps that are, in the circumstances, reasonable to ensure that the individual concerned is aware of—
  - (a) the fact that the information is being collected; and
  - (b) the purpose for which the information has been collected; and
  - (c) the intended recipients of the information; and
  - (d) the name and address of—
    - (i) the agency that has collected the information; and
    - (ii) the agency that is holding the information; and
  - (e) if the collection of the telecommunications information is authorised or required by or under the law, the particular law by or under which the collection of the information is authorised or required; and
  - (f) the rights of access to, and correction of, telecommunications information provided by rules 6 and 7.
- (2) The steps referred to in subrule (1) must be taken as soon as is reasonably practicable after the telecommunications information has been collected (unless taken sooner).
- (3) A telecommunications agency is not required to take the steps referred to in subrule (1) in relation to the collection of personal information if the individual concerned has previously been made aware by any means of all of the matters specified in subclause (1) in relation to the telecommunications agency's collection of the information.
- (4) It is not necessary for a telecommunications agency to comply with subrule (1) if the telecommunications agency believes, on reasonable grounds,—
  - (a) that non-compliance would not prejudice the interests of the individual concerned; or
  - (b) that the telecommunications information is publicly available information; or
  - (c) that non-compliance is necessary—
    - (i) to avoid prejudice to the maintenance of the law by any public sector agency, including prejudice to the prevention, detection, investigation, prosecution, and punishment of offences; or
    - (ii) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation); or
    - (iii) for the purpose of preventing or investigating an action or threat that may compromise network or service security or integrity; or
  - (d) that compliance would prejudice the purposes of the collection; or
  - (e) that compliance is not reasonably practicable in the circumstances of the particular case; or
  - (f) that compliance would cause a serious threat to—



- (i) public health or safety; or
  - (ii) the health or safety of another individual; or
- (g) that the telecommunications information—
  - (i) will not be used in a form in which the individual concerned is identified; or
  - (ii) will be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
  - (iii) that the collection is for the purposes of interconnection or the delivery of a CMS.
- (5) It is not necessary for a telecommunications agency to comply with subrule (1) if compliance would be likely to prejudice—
  - (a) the security or defence of New Zealand, the Cook Islands, Niue, Tokelau, or the Ross Dependency; or
  - (b) the international relations of the Government of New Zealand, the Cook Islands, or Niue; or
  - (c) the relations between any of the Governments of—
    - (i) New Zealand; or
    - (ii) the Cook Islands; or
    - (iii) Niue; or
  - (d) the entrusting of information to the Government of New Zealand on a basis of confidence by—
    - (i) the Government of any other country or any agency of the Government of any other country; or
    - (ii) any international organisation.
- (6) Where a network operator participates in the emergency location information system in accordance with Schedule 4, it must ensure that additional steps required by clause 5 of Schedule 4 are taken to meet specific transparency obligations in relation to the system.
- (7) Rule 3A does not apply to telecommunications information collected before 1 May 2026.

#### **Rule 4**

##### **Manner of collection of telecommunications information**

- (1) A telecommunications agency may collect telecommunications information only—
  - (a) by a lawful means; and
  - (b) by a means that, in the circumstances of the case (particularly in circumstances where the information is being collected from children or young persons),—
    - (i) is fair; and
    - (ii) does not intrude to an unreasonable extent upon the personal affairs of the individual concerned.
- (2) Subject to section 107 of the Telecommunications Act 2001, a network operator or

Internet service provider may monitor the call associated data of an individual where necessary for the purpose of investigating an action that may threaten network security or integrity.

### **Rule 5**

#### **Storage and security of telecommunications information**

- (1) A telecommunications agency that holds telecommunications information must ensure—
  - (a) that the information is protected, by such security safeguards as it is reasonable in the circumstances to take, against—
    - (i) loss; and
    - (ii) access, use, modification, or disclosure, that is not authorised by the telecommunications agency; and
    - (iii) other misuse; and
  - (b) that, if it is necessary for the information to be given to a person in connection with the provision of a service to the telecommunications agency, everything reasonably within the power of the agency is done to prevent unauthorised use or unauthorised disclosure of the information.
- (2) Where a network operator discloses emergency location information in accordance with Schedule 4, it must ensure that additional steps required by clause 7 of Schedule 4 are taken to safeguard that information.
- (3) This rule applies to telecommunications information obtained before or after the commencement of this code.

### **Rule 6**

#### **Access to telecommunications information by individual concerned**

- (1) An individual is entitled to receive from a telecommunications agency upon request—
  - (a) confirmation of whether the agency holds any telecommunications information about them; and
  - (b) access to that information.
- (2) If an individual concerned is given access to telecommunications information, the individual must be advised that, under rule 7, the individual may request the correction of that information.
- (3) When a telecommunications agency refuses a request under subrule (1), it must advise the individual of the complaints process available under Schedule 1.
- (4) The application of subrules (1) and (2) is subject to the provisions of Part 4 of the Act (which sets out reasons for refusing access to information and procedural provisions relating to access to information).
- (5) This rule applies to telecommunications information obtained before or after the commencement of this code.

### **Rule 7**

#### **Correction of telecommunications information**

- (1) An individual whose telecommunications information is held by a telecommunications

- agency is entitled to request the telecommunications agency to correct the information.
- (2) A telecommunications agency that holds telecommunications information must, on request or on its own initiative, take such steps (if any) that are reasonable in the circumstances to ensure that, having regard to the purposes for which the information may lawfully be used, the information is accurate, up to date, complete and not misleading.
  - (3) When requesting the correction of telecommunications information, or at any later time, an individual is entitled to—
    - (a) provide the telecommunications agency with a statement of the correction sought to the information (a statement of correction); and
    - (b) request the telecommunications agency to attach the statement of correction to the information if the agency does not make the correction sought.
  - (4) If a telecommunications agency that holds telecommunications information is not willing to correct the information as requested and has been provided with a statement of correction, the telecommunications agency must take such steps (if any) that are reasonable in the circumstances to ensure that the statement of correction is attached to the information in a manner that ensures that it will always be read with the information.
  - (5) If a telecommunications agency corrects telecommunications information or attaches a statement of correction to telecommunications information, that agency must, so far as is reasonably practicable, inform every other person to whom the agency has disclosed the information.
  - (6) Where a telecommunications agency refuses a request made under subrule (1), it must advise the individual of the complaints process available under Schedule 1.
  - (7) The application of this rule is subject to the provisions of Part 4, subpart 2 of the Act (which sets out procedural provisions relating to correction of information).
  - (8) This rule applies to telecommunications information obtained before or after the commencement of this code.

### **Rule 8**

#### **Accuracy, etc, of telecommunications information to be checked before use or disclosure**

- (1) A telecommunications agency that holds telecommunications information must not use or disclose that information without taking any steps that are, in the circumstances, reasonable to ensure that the information is accurate, up to date, complete, relevant, and not misleading.
- (2) This rule applies to telecommunications information obtained before or after the commencement of this code.

### **Rule 9**

#### **Retention of telecommunications information**

- (1) A telecommunications agency that holds telecommunications information must not keep that information for longer than is required for the purposes for which the information may lawfully be used.
- (2) This rule applies to telecommunications information obtained before or after the commencement of this code.

**Rule 10**  
**Limits on use of telecommunications information**

- (1) A telecommunications agency that holds telecommunications information that was obtained in connection with one purpose may not use the information for any other purpose unless the agency believes, on reasonable grounds,—
- (a) that the purpose for which the information is to be used is directly related to the purpose in connection with which the information was obtained; or
  - (b) that the information—
    - (i) is to be used in a form in which the individual concerned is not identified; or
    - (ii) is to be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
  - (c) that the use of the information for that other purpose is authorised by the individual concerned, provided that if the other purpose is for direct marketing the individual has been advised that they may withdraw such authorisation at any time; or
  - (d) that the source of the information is a publicly available publication and that in the circumstances of the case, it would not be unfair or unreasonable to use the information; or
  - (e) that the use of the information for that other purpose is necessary—
    - (i) to avoid prejudice to the maintenance of the law by any public sector agency, including prejudice to the prevention, detection, investigation, prosecution, and punishment of offences; or
    - (ii) for the protection of public revenue; or
    - (iii) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation); or
    - (iv) for the purpose of preventing or investigating an action or threat that may compromise network or service security or integrity; or
  - (f) that the use of the information for that other purpose is necessary to prevent or lessen a serious threat to—
    - (i) public health or public safety; or
    - (ii) the life or health of the individual concerned or another individual; or
  - (g) that the use of the information is necessary to investigate a complaint concerning a malicious or nuisance telecommunication and to take appropriate action; or
  - (h) that the use of the information is necessary for—
    - (i) the provision of a seamless telecommunications service to subscribers; or
    - (ii) the development or supply of any broadband, intelligent, interactive or multimedia services or other forms of telecommunications service; or
    - (iii) the provision of a CMS; or

- (iv) the purpose of interconnection, wholesaling or similar arrangements between network operators; or
  - (i) that the use of the information is in accordance with an authorisation granted under section 30 of the Act.
- (2) A telecommunications agency must not use traffic information obtained as a result of interconnection, wholesaling or similar arrangements between network operators for the purposes of direct marketing to an individual who is not a subscriber of the agency without the authorisation of that individual.
- (3) This rule does not apply to telecommunications information obtained before 1 July 1993.

### **Rule 11**

#### **Limits on disclosure of telecommunications information**

- (1) A telecommunications agency that holds telecommunications information must not disclose the information unless the agency believes, on reasonable grounds,—
  - (a) that the disclosure of the information is one of the purposes in connection with which the information was obtained or is directly related to the purposes in connection with which the information was obtained; or
  - (b) that the disclosure is to the individual concerned; or
  - (c) that the disclosure is authorised by the individual concerned; or
  - (d) that the source of the information is a publicly available publication and that, in the circumstances of the case, it would not be unfair or unreasonable to use the information; or
  - (e) that the disclosure is to a subscriber for billing purposes and the information identifies the details of a call for which a specific charge is made, such as a toll call, collect call, or an 0800 or 0900 (or equivalent) call; or
  - (f) that non-compliance is necessary—
    - (i) to avoid prejudice to the maintenance of the law by any public sector agency, including prejudice to the prevention, detection, investigation, prosecution, and punishment of offences; or
    - (ii) for the enforcement of a law that imposes a pecuniary penalty; or
    - (iii) for the protection of public revenue; or
    - (iv) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation); or
    - (v) for the purpose of preventing or investigating an action or threat that may compromise network or service security or integrity; or
  - (g) that the disclosure of the information is necessary to prevent or lessen a serious threat to—
    - (i) public health or public safety; or
    - (ii) the life or health of the individual concerned or another individual; or
  - (h) except where the disclosure of the information may be sought in accordance with

a business records direction under Part 5(4) of the Intelligence and Security Act 2017, that the disclosure of the information is necessary to enable an intelligence and security agency to perform any of its functions; or

- (i) that the information—
    - (i) is to be used in a form in which the individual concerned is not identified; or
    - (ii) is to be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
  - (j) that the disclosure is to the relevant public sector agency for the purposes of Schedule 4; or
  - (k) that the disclosure is necessary to enable emergency services to respond to a potential threat to the life or health of the individual concerned or another individual; or
  - (l) that the disclosure of the information is necessary to facilitate the sale or other disposition of a business as a going concern; or
  - (m) that the disclosure is necessary to deal with a service or billing enquiry and the disclosure is to—
    - (i) a member of a subscriber's household; or
    - (ii) a representative of a business subscriber;
 who appear to be acting on behalf of the subscriber; or
  - (n) that the disclosure of the information is necessary for—
    - (i) the provision of a seamless telecommunications service to subscribers; or
    - (ii) the development or supply of any broadband, intelligent, interactive or multimedia services or other forms of telecommunications service; or
    - (iii) the provision of a CMS; or
    - (iv) interconnection, wholesaling or similar arrangements between network operators; or
  - (o) that the information is information enabling a subscriber to be identified and contacted and the disclosure is by inclusion in a directory or directory enquiry service, or by disclosure to a directory publisher or directory enquiry agency for inclusion in a directory or directory enquiry service, and the disclosure is authorised by the subscriber concerned and in accordance with the requirements of Schedule 2; or
  - (p) that the disclosure is by means of CLIP and is in accordance with the requirements of Schedule 3; or
  - (q) that the disclosure of the information is in accordance with an authorisation granted under section 30 of the Act.
- (2) This rule applies to telecommunications information obtained before or after the commencement of this code.
  - (3) This rule is subject to rule 12.

## Rule 12

### Disclosure of telecommunications information outside New Zealand

- (1) A telecommunications agency (A) may disclose telecommunications information to a foreign person or entity (B) in reliance on Rule 11(a), (c), (f), (g), (i), (k), (l), or (q) only if—
  - (a) the individual concerned authorises the disclosure to B after being expressly informed by A that B may not be required to protect the information in a way that, overall, provides comparable safeguards to those in the Act, as modified by this code; or
  - (b) B is carrying on business in New Zealand and, in relation to this information, A believes on reasonable grounds that B is subject to the Act, as modified by this code; or
  - (c) A believes on reasonable grounds that B is subject to privacy laws that, overall, provide comparable safeguards to those in the Act, as modified by this code; or
  - (d) A believes on reasonable grounds that B is a participant in a prescribed binding scheme; or
  - (e) A believes on reasonable grounds that B is subject to privacy laws of a prescribed country and the disclosure is not precluded by any limitation or qualification prescribed in respect of that country under section 214(3) of the Act; or
  - (f) A otherwise believes on reasonable grounds that B is required to protect the information in a way that, overall, provides comparable safeguards to those in the Act, as modified by this code (for example, pursuant to an agreement entered into between A and B); or
  - (g) ~~that~~ the disclosure of the information is in accordance with an authorisation granted under section 30 of the Act.
- (2) However, subrule (1) does not apply if the telecommunications information to be disclosed to B in reliance on rule 11(1)(f), (g) or (k) and it is not reasonably practicable in the circumstances for A to comply with the requirements of subrule (1).
- (3) In this rule—

**prescribed binding scheme** means a binding scheme specified in regulations made under section 213 of the Act

**prescribed country** means a country specified in regulations made under section 214 of the Act ~~that are made without any qualification or limitation relating to a class of person that includes B, or to a type of information that includes credit information.~~

## Rule 13

### Unique identifiers

- (1) A telecommunications agency (A) may assign a unique identifier to an individual for use in its operations only if that identifier is necessary to enable A to carry out 1 or more of its functions efficiently.
- (2) A may not assign to an individual a unique identifier that, to A's knowledge, is the same unique identifier as has been assigned to that individual by another agency (B), unless—
  - (a) A and B are associated persons within the meaning of subpart YB of the Income Tax Act 2007; or

- (b) the unique identifier is to be used by A for statistical or research purposes and no other purpose; or
  - (c) it is permitted by subrule (6).
- (3) To avoid doubt, A does not assign a unique identifier under subrule (1) by simply recording a unique identifier assigned to the individual by B for the sole purpose of communicating with B about the individual.
- (4) A must take any steps that are, in the circumstances, reasonable to ensure that—
  - (a) a unique identifier is assigned only to an individual whose identity is clearly established; and
  - (b) the risk of misuse of a unique identifier by any person is minimised (for example, by showing truncated account numbers on receipts or in correspondence).
- (5) A telecommunications agency may not require an individual to disclose any unique identifier to that individual unless the disclosure is for one of the purposes in connection with which that unique identifier was assigned or for a purpose that is directly related to one of those purposes.
- (6) Notwithstanding subrules (2) and (4), a telecommunications agency may identify a telephone installation or an individual associated with that installation by reference to a number or identifier generated or assigned by another telecommunications agency where that is necessary for interconnection, wholesaling or similar arrangements between telecommunications agencies or between a telecommunications agency and another agency providing telecommunications service.
- (7) Subrules (1) to (4)(a) do not apply to unique identifiers assigned before 1 November 2003.
- (8) However, subrule (2) applies to the assignment of a unique identifier on or after 1 November 2003 even if the unique identifier is the same as that assigned by another agency before that date.

## **7 Revocation**

The Telecommunications Information Privacy Code 2003 is revoked.



## **Schedule 1**

### **Complaints of breach of code**

- (1) Each telecommunications agency must designate a person or persons to deal with complaints alleging a breach of this code and facilitate the fair, simple, speedy and efficient resolution of complaints.
- (2) Each telecommunications agency must have a complaints procedure which provides that—
  - (a) when a complaint of a breach of this code is received—
    - (i) the complaint is acknowledged within 5 working days of receipt, unless it has been resolved to the satisfaction of the complainant within that period; and
    - (ii) the complainant is informed of any relevant internal and external complaints procedures; and
    - (iii) the complaint and the actions of the agency regarding that complaint are documented; and
  - (b) within 10 working days of acknowledging the complaint, the agency must—
    - (i) decide whether it—
      - (A) accepts that the complaint is justified; or
      - (B) does not accept that the complaint is justified; or
    - (ii) if it decides that more time is needed to investigate the complaint—
      - (A) determine how much additional time is needed; and
      - (B) if that additional time is more than 20 working days, inform the complainant of that determination and the reasons for it; and
  - (c) as soon as practicable after the agency decides whether or not it accepts that a complaint is justified, it must inform the complainant of—
    - (i) the reasons for the decision; and
    - (ii) any actions the agency proposes to take; and
    - (iii) the right to complain to the Privacy Commissioner.
- (3) Nothing in this Schedule limits or restricts any provision of the Act.

## **Schedule 2**

### **Directories and directory enquiry services**

- (1) Any disclosure made under rule 11(1)(o) must be in accordance with—
  - (a) the agency's policy notified generally or to the subscriber concerned; and
  - (b) any authorisation given by the subscriber; and
  - (c) clauses 2, 3, 7, 8 and 9.
- (2) A network operator or Internet service provider must not make it a condition of supply of telecommunications services that subscriber information be published in a directory or be made available through a directory enquiries service.
- (3) Unless the subscriber concerned explicitly authorises to the contrary, a directory publisher or directory enquiry agency must arrange a directory or operate a directory enquiry service so that—
  - (a) to search for a subscriber's telephone number—
    - (i) using a directory enquiry service, an enquirer is required to provide both the approximate name and approximate address of the subscriber being sought; and
    - (ii) using an electronic directory, a searcher is required to provide the approximate name of the subscriber being sought; and
  - (b) where a subscriber's name, address and telephone number is published or displayed in printed or electronic form it is ordered alphabetically by the name of the subscriber concerned; and
  - (c) where a subscriber's name, address and telephone number is published or displayed in a directory it is not ordered to allow searches by address only; and
  - (d) subscriber information is not disclosed by way of a reverse search facility; and
  - (e) where a subscriber has expressed a preference for their name to appear in the directory in a certain form, the name is not published in any other form; and
  - (f) where a subscriber requests that only part of their address is included in a directory, their full address is not published.
- (4) Clauses 3(a), (b), (c) and (d) do not apply in relation to a business subscriber.
- (5) Notwithstanding clauses 3(e) and (f), a telecommunications agency is not required to seek explicit authorisation from an existing subscriber as to the form in which that subscriber's name or address is to appear in a directory (including a reprinted or reissued directory) or a directory enquiry service, but must act upon any request received.
- (6) For the purposes of clause 5, an existing subscriber means a subscriber who has, as at 1 April 2005, authorised a telecommunications agency to include their details in a published or compiled directory.
- (7) Where a telecommunications agency discloses subscriber information to a directory agency or a directory enquiry agency for the purposes of inclusion in a directory or directory enquiry service, the agency must do everything reasonably within its power to ensure that the directory publisher or directory enquiry agency will comply with the

requirements of this code in relation to the publication or release of the subscriber information.

- (8) Where an agency intends to seek explicit authorisation from a subscriber for a practice that would otherwise be contrary to clause 3, it must—
  - (a) notify the subscriber concerned directly of the agency's policy and the available options before obtaining the authorisation; and
  - (b) advise the subscriber that it is not mandatory for the information to be disclosed in the directory or directory enquiry service; and
  - (c) inform the subscriber that the authorisation may in the future be withdrawn and explain how this may be done.
- (9) A telecommunications agency must take such steps as are, in the circumstances, reasonable to ensure that subscribers are aware of the agency's practices in relation to directories and directory enquiry services and of the options available concerning the fact and form of publication, release or withholding of subscriber details in full or in part.
- (10) Without limiting clause 9, a telecommunications agency that publishes a directory on the Internet must—
  - (a) take such steps as are, in the circumstances, reasonable to ensure that affected subscribers are aware that information about them is published in this manner and the implications for the accessibility of the information by other people (for example, any significant differences from the way in which the information may otherwise be made available in non-electronic directories); and
  - (b) promptly act to remove information relating to a subscriber from the Internet directory where that subscriber withdraws their authorisation for inclusion.

### **Schedule 3**

#### **Caller line information presentation**

- (1) A telecommunications agency may disclose telecommunications information by means of CLIP, provided that—
  - (a) subscribers are given the option to block the display of calling line identity on a per-line basis for both incoming and outgoing calls; and
  - (b) callers are given the means to block the display of calling line identity on a per-call basis for outbound calls; and
  - (c) the agency takes reasonable steps to ensure that—
    - (i) subscribers are made aware of the option to have per-line blocking; and
    - (ii) users of the network are made aware of the ability to utilise per-call blocking; and
  - (d) simple means are available for—
    - (i) obtaining per-line blocking; and
    - (ii) exercising per-call blocking; and
    - (iii) ascertaining whether an outgoing line is blocked; and
  - (e) the option to obtain per-line blocking, and the means to obtain per-call blocking and to ascertain whether an outgoing line is blocked, are made available free of charge.
- (2) A telecommunications agency may override any block applied pursuant to clauses 1(a) or (b) if the call is to the 111 emergency call service (including a call to any other number that connects to that service).
- (3) A telecommunications agency is not required to provide the options in clauses 1(a) and (b) in respect of a particular subscriber's line where it believes, on reasonable grounds, that—
  - (a) the line is used for direct marketing purposes; or
  - (b) the line has been misused for the purpose of disturbing, annoying or irritating any person; and

the agency advises the subscriber that blocking will not be, or is no longer to be, provided on that line.
- (4) A telecommunications agency is not required to provide the options and means referred to in clauses 1(a) and (b) where the availability of an answer-back function is inherent in the nature of the service being provided to the subscriber concerned.

## Schedule 4

### Emergency location information

Schedule 4 enables the disclosure of emergency location information (“ELI”) by network operators to emergency service providers, and the collection and use of ELI 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, or to prevent or lessen a serious threat to an individual’s life or health.

The Schedule regulates location information which is automatically generated when making an emergency call. It also regulates the use of technology that enables the collection of location information about cellular devices in the absence of an emergency call from the individual concerned, where this is necessary to prevent or lessen a serious threat to individual life or health.

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

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

#### 1 Interpretation

In this Schedule,—

**cellular device** means a telecommunication device capable of connecting to a cellular network

**Device Location Information (DLI)** means location information that is—

- (a) derived from a DLI source; and
- (b) not generated by an emergency call

**DLI source** means—

- (a) a cellular device; or
- (b) in relation to a cellular device, a network operator

**ECLI source** means—

- (a) a telecommunication device enabled automatically to send ECLI to the Emergency Location Information System (ELIS) when an emergency call is made; or
- (b) in relation to a telecommunication device, a network operator

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

**Emergency Caller Location Information (ECLI)** means location information that is—

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

**Emergency Location Information (ELI)** means—

- (a) DLI; and

(b) ECLI

**Emergency Location Information System (ELIS)** means the system which receives and processes ELI and makes ELI available to emergency service providers for the permitted primary purpose and permitted secondary purpose

**emergency service provider** means—

- (a) New Zealand Police; or
- (b) Fire and Emergency New Zealand; or
- (c) The Priory in New Zealand of the Most Venerable Order of the Hospital of St John of Jerusalem (St John); or
- (d) Wellington Free Ambulance Service (Incorporated); or
- (e) *[revoked]*
- (f) Maritime New Zealand; or
- (g) any other agency authorised by the relevant public sector agency under clause 2 of this Schedule to receive ELI

**location agency** means—

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

**location information** means personal information indicating the approximate geographical position of a device, which may include the latitude, longitude, altitude and direction of travel of that device

**permitted primary purpose** means—

- (a) in relation to ECLI, to enable an emergency service provider to facilitate a response to an emergency call; or
- (b) in relation to DLI, to enable an emergency service provider to prevent or lessen a serious threat to the life or health of the individual concerned or another individual

**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 by an emergency service provider; and
- (b) monitoring and auditing the operation of the ELIS by the relevant public sector agency

**relevant public sector agency** means the public sector agency responsible for the ELIS

**serious threat** has the same meaning as in section 7(1) of the Act

**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

**telecommunication device**—

- (a) means any terminal device capable of being used for transmitting or receiving a telecommunication over a network; and

- (b) includes a cellular device.

## **2 Additional agencies authorised to receive ELI**

- (1) For the purposes of paragraph (g) of the definition of emergency service provider, the relevant public sector agency may, after consulting the Commissioner, authorise an agency to receive ELI where that agency—
  - (a) provides emergency services to the public; and
  - (b) requires ELI for the permitted primary purpose.

## **3 Collection, use, disclosure and accuracy of ELI**

- (1) A location agency may collect, use or disclose ELI if it believes on reasonable grounds that—
  - (a) the collection, use or disclosure is necessary for a permitted primary purpose or permitted secondary purpose; and
  - (b) in the case of a disclosure – the disclosure is to another location agency or to a person permitted by subclause 3(8).
- (2) The relevant public sector agency may collect ELI in compliance with subclause (1)(a) either—
  - (a) directly from the relevant telecommunication device; or
  - (b) from the relevant network operator.
- (3) Maritime New Zealand or any agency authorised under clause 2 to receive ELI must not collect ELI directly from the ELIS.
- (4) Before collecting, using or disclosing DLI in relation to a cellular device, an emergency service provider must take all reasonable steps to ensure that the device relates to the individual whose location is necessary for the purpose of responding to the serious threat.
- (5) Where an emergency service provider collects ELI, it must ensure that the frequency and duration of the collection is limited to that which is necessary for the permitted primary purpose.
- (6) A location agency may combine ELI with other information – such as aggregated geolocation information – in order to improve the accuracy of ELI for the permitted primary purpose.
- (7) A network operator or emergency service provider is restricted by this clause in its collection, use or disclosure of ELI only to the extent that the information is sourced from the ELIS.
- (8) A location agency may disclose ELI to any agency or individual who is working with that location agency to locate and rescue that individual.

## **4 Notice of collection**

- (1) An emergency service provider, or the relevant public service agency on its behalf, must, as soon as reasonably practicable after collecting DLI pursuant to clause 3(1)(a), notify the individual concerned of:
  - (a) the date and time the information was collected; and

- (b) the type of information collected; and
  - (c) the duration of the collection; and
  - (d) the purpose for the collection.
- (2) An emergency service provider is not required to take the steps referred to in subclause (1) if it believes, on reasonable grounds, that doing so would be likely to prejudice the physical or mental health of the individual concerned or another individual.
- (3) Within 7 days of making a decision under subclause (2), an emergency service provider must—
  - (a) review that decision to determine whether subclause (2) still applies; and
  - (b) if subclause (2) no longer applies, take the steps referred to in subclause (1).
- (4) Subject to the general transparency requirements set out at clause 5, a location agency is not required to notify an individual of the collection of ELI.

## **5 General duty of transparency**

- (1) Location agencies should apply a general policy of openness and transparency in respect of the ELIS 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 ELIS, including—
    - (i) how ELI is generated or collected, and shared; and
    - (ii) how ELI will be used and the benefits to the public of the system; and
    - (iii) where ELI will be stored and for how long; and
    - (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.

## **6 Retention of ELI**

- (1) A location agency must not keep ELI sourced from the ELIS for longer than is required for a permitted primary purpose or permitted secondary purpose.
- (2) Where the relevant public service agency retains ELI for the purpose of monitoring or auditing the operation of the ELIS, reasonable steps must be taken to ensure that the information is not retained in a form that is capable of identifying the individual to whom the information relates.

## **7 Safeguards to ensure compliance**

- (1) A location agency must take reasonable steps to ensure that it collects, retains, uses and discloses ELI 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, accuracy, use and disclosure of ELI; and
  - (b) provide information and training to relevant employees or agents to ensure compliance with these policies and procedures; and
  - (c) monitor usage and regularly check compliance with the requirements of the Schedule and, in particular, with the limitations on the retention of ELI; and
  - (d) take prompt and effective action in respect of any failure to comply with the requirements of the Schedule.
- (3) The relevant public sector agency must maintain a log of all disclosures of DLI (**disclosure log**), which includes—
- (a) whether the disclosure was in reliance on the permitted primary purpose, the permitted secondary purpose, or another purpose; and
  - (b) where the disclosure was in reliance on the permitted primary purpose, the grounds for believing that it was necessary; and
  - (c) where the disclosure was in reliance on another purpose, a description of this other purpose and the statutory authority on which it was based; and
  - (d) the date of the disclosure and the duration for which DLI was collected; and
  - (e) whether or not the individual concerned was notified in accordance with clause 4.
- (4) For the avoidance of doubt, where the relevant public sector agency uses DLI for either:
- (a) the permitted primary purpose; or
  - (b) paragraph (a) of the permitted secondary purpose,
- it must treat this as a disclosure of DLI for the purposes of clause 7(3).

## **8 Assurance of compliance**

- (1) The relevant public sector agency must, before authorising an agency under clause 2 to receive ELI from the ELIS, seek and obtain an assurance that the agency will take the steps required by clause 7.
- (2) A location agency – including the relevant public sector agency – must, on request from the Commissioner, provide a written assurance that the steps required by clause 7 have been taken.
- (3) Every three months, the relevant public sector agency must provide to the Commissioner the disclosure log for the preceding three-month period.