



Public Version

**Proposed amendments to the
Telecommunications Information Privacy Code**

Privacy Commissioner

13 July 2017

Spark wishes to register its support for the submission made by the New Zealand Telecommunications Forum Incorporated (TCF) on Amendment No. 6 to the Telecommunications Information Privacy Code 2003.

Retail Service Providers (RSPs) such as Spark hold personal and confidential information on our customers and our customers expect us to keep this information safe. If law enforcement or intelligence agencies require access to this information then our strong preference is that RSPs should be formally compelled to provide it.

This approach increases accountability in the system as the requesting agency needs to confirm its request is lawful and is therefore less likely to test the legal boundaries by relying on the RSP to reject their request. It is not appropriate for the RSP to make its own judgement on whether it should provide this information to an agency as it is not aware (nor should it be) of the background, context and justification for the request.

Under the Intelligence and Security Act 2017, the Director General of the relevant agency has the ability to compel an RSP to provide customer information by obtaining a warrant, or by using a business records direction if they are satisfied that the information requested is necessary to allow the agency to perform its function.

As such, additional provisions for non-warranted requests in the Telecommunications Information Privacy Code are not necessary. We therefore support the changes to the drafting as proposed by the TCF which will:

- place accountability for determining whether the information is actually required for the purpose of the agency's lawful functions with the organisation best placed to make this assessment based on their role, the information at their disposal and their subject matter expertise;
- protect the privacy of RSP customers by not unnecessarily requiring RSPs to be privy to information or make enquiries about the nature of the intelligence and sharing agency's request or investigation;
- enable RSPs to support the lawful functions of the intelligence and security agencies without unnecessarily infringing on the privacy of their customers;
- facilitate oversight of the exercise of non-warranted requests by ensuring all non-warranted information requests from intelligence and security agencies to RSPs are documented in a register of business record directions as required by section 153 of the Intelligence and Security Act 2017;
- support the intent of the Intelligence and Security Act 2017.

[ends]