

**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
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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