



John Edwards, Privacy Commissioner
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BY POST & EMAIL

14 December 2016

Dear Mr Edwards

**SUBMISSION ON PROPOSED AMENDMENT NO 5 TO THE TELCOMMUNICATIONS
INFORMATION PRIVACY CODE 2003**

1. This letter responds to the Office of the Privacy Commissioner's request for submissions on the proposed amendments, including a proposed new Schedule 4 ("**Schedule**"), to the Telecommunication Information Privacy Code 2003 ("**Code**").
2. The Ministry of Business, Innovation and Employment ("**MBIE**") welcomes the proposed amendments. We thank the Commissioner for agreeing to intervene in relation to this important new system which is designed to assist in facilitating prompt responses to the 1.24 million emergency calls each year that are transferred to emergency services. It will also help respond to the 1,866 incidents recorded by Police in the 12 months to 31 May 2016 where the caller's location was unable to be determined.
3. MBIE considers that it is appropriate for the Commissioner to intervene in this situation in order to (a) provide certainty as to how New Zealand's privacy laws operate in relation to the data collected and shared in this system; and (b) to aid public confidence in this project which is one that very much has the public good at heart.
4. MBIE does, however, have a small number of comments on the proposed amendments to the Code and the new Schedule. These comments are set out in the body of this letter and in Annexure One. Annexure Two of this letter then includes a marked-up version of the new Schedule showing MBIE's suggested changes and Annexure Three includes a marked-up version of body of the Code.

Comments on the Information Paper

5. While we appreciate that the Information Paper released will not form part of the Code, there are some points arising from it that MBIE wishes to clarify:
 - (a) So that there is no doubt about what emergency callers can expect when they call 111, callers should know that collection of ECLI is intended to supplement, not replace, the conversation between the call taker and an emergency caller. Call takers will still seek location information directly from emergency callers. ECLI will be used where necessary to supplement that information to enable a prompt emergency response.
 - (b) The drafting note to cl 3(3) is not a completely accurate description of how it is currently proposed that the technology will work. The solution does use



geolocation information provided by other service providers but we simply pass the network cell id to the geolocation service and receive back three items of data, longitude, latitude and radius (i.e. coverage of the cell tower). The extended explanation and example of that part of the solution is erroneous. The geolocation service neither looks at groupings of callers who are near the cell tower (as there may be none), nor would it refine radius to show where callers tend to be as this would give an inaccurate radius/coverage of the cell tower. Both example could suggest that a caller is in a different location to where they actually are leading to delays in verifying a caller's location. . Emergency callers should be aware that the exact mechanics of the system, including methods used to improve the accuracy of ECLI, are not set in stone and may change in future.

- (c) The drafting note to cl 4(1) states that ECLI will be gathered without the consent of the individuals concerned. MBIE does not consider that tells the whole story. Most emergency callers will be calling from their own devices, and will likely have signed up to terms and conditions with their network provider and/or device operating system provider that authorise the collection of ECLI. However, because express consent will not be given at the time of collection, MBIE has proposed that the Commissioner intervene by way of a Code to make the operation of the system open and transparent and to help alleviate any public concern.

- 6. MBIE also wishes to comment, for completeness, on the Privacy Commissioner's blog post relating to the Schedule. It is worth noting that if the Belgian visitor mentioned in the blog had been "roaming" in New Zealand with his device from overseas, his emergency call would not normally generate ECLI. The system only works with New Zealand SIM cards. This is one of the reasons why callers to the 111 emergency service will still be asked for their location by call takers.

Comments on the Schedule

- 7. In summary, MBIE has concerns in relation to the following parts of the new Schedule:
 - (a) a statement in the opening explanatory paragraphs;
 - (b) the definition of "permitted primary purpose";
 - (c) the definition of "ECLI";
 - (d) the definition of "specified emergency number";
 - (e) the use of the phrase "emergency response agency", as opposed to the industry-accepted terminology "emergency service provider"; and
 - (f) aspects of the drafting of cls 3(2) and 3(4).

Our detailed comments on each of these areas, including suggested wording changes, are included in Annexure One **attached**.

Comments on proposed amendments to the Code itself

- 8. At Appendix 2 of the Information Paper, proposed changes to the Code itself are set out. We have two additional comments in relation to those:
 - (a) While the term "location information" is used in cl 4 of Appendix 2, which amends rule 5 of the Code, that term is not defined. We suggest that it would

be more certain and consistent if the words "location information" were, therefore, replaced by "ECLI"; and

- (b) Our comments regarding the definition of "specified emergency number" set out in Annexure One also apply to cl 6 of Appendix 2, which amends Schedule 3 (Caller line information presentation) of the Code.

9. Our suggested wording changes in this regard are set out in Annexure Three.

Conclusion

10. MBIE again thanks the Commissioner for taking steps to assist in the launch and ongoing operation of this important new system in New Zealand. Should you wish to discuss any aspect of this submission further, please contact [REDACTED] at [REDACTED]

Yours faithfully

[REDACTED]

Ann Brennan	Brad Ward
Chief Legal Advisor	General Manager Commerce Consumers and Communications

**ANNEXURE ONE: TABLE OF PROPOSED CHANGES
TO SCHEDULE**

	Proposed Change	Comment
Opening explanatory paragraphs	<p><u>Change</u> <i>"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."</i></p> <p><u>To</u> <i>"The Schedule regulates location information which is automatically generated by enabled mobile devices, and by network operators using cell tower locations, when an emergency call is made."</i></p>	<p>We are concerned that the present paragraph is potentially misleading. In some cases an enabled mobile device will generate low precision information, rather than high precision information, due to poor service or an inability to get a GPS lock.</p>
Definition of 'Emergency Caller Location Information (ECLI)'	<p><u>Change</u> <i>"personal information indicating the geographical position of a mobile device, including the latitude, longitude and altitude of that device"</i></p> <p><u>To</u> <i>"personal information indicating the approximate geographical position of a mobile device, including the latitude, longitude or altitude of that device".</i></p>	<p>We are concerned that the present definition of ECLI gives the perception that ECLI will always precisely reveal the location of the mobile device. It does not – cell tower information will produce a circle on a map showing a coverage radius which may be very large (up to 20 square kilometres). MBIE, therefore, proposes changing the definition of ECLI to make this clear.</p> <p>We note also that altitude information will not be collected at this stage, but may be in future. Therefore ECLI should be defined disjunctively as including the "latitude, longitude OR altitude" of the device (the presence of all three data points should not be a precondition of finding that personal information is ECLI).</p>
Definition of 'emergency response agency'	<p><u>Change</u> <i>"Emergency response agency"</i></p> <p><u>To</u> <i>"Emergency service provider"</i></p>	<p>We suggest that this terminology be changed. The groups listed refer to themselves as "Emergency Service Providers", and consistency in that respect is desirable.</p>

**ANNEXURE ONE: TABLE OF PROPOSED CHANGES
TO SCHEDULE**

	Proposed Change	Comment
Definition of 'permitted primary purpose'	<p><u>Change</u> <i>"means to enable an emergency response agency to establish the location of an emergency caller"</i></p> <p><u>To</u> "means to enable an emergency service provider to facilitate a response to an emergency call"</p>	<p>In MBIE's view, the primary purpose is broader than just locating the caller. Often locating the caller will reveal the location of the emergency, but not always if the emergency is elsewhere. The ultimate purpose of collecting and sharing ECLI is, therefore, facilitating an effective, prompt response to emergencies notified by emergency call. The aim is to locate the emergency, not the caller per se.</p>
Definition of 'specified emergency number'	<p><u>Change</u> <i>"means 111 or any number directed to the 111 emergency line as agreed by the location agencies from time to time."</i></p> <p><u>To</u> "means 111 or any other number that: (a) puts the caller in contact with the 111 emergency call service; and (b) is designated as an emergency number as agreed by the location agencies from time to time."</p>	<p>We do not consider that this definition fits appropriately with the technology presently used.</p> <p>Other jurisdictions' emergency numbers (eg 911) which are recognised in NZ are not 'directed to 111'. They are configured in the phone networks as an emergency number and in most cases (although not on all networks) are treated the same.</p> <p>Our proposed definition provides certainty, and an assurance that phone numbers unconnected to the 111 Initial Call Answering Point will not be designated as emergency numbers.</p>
Clause 3(2)	<p><u>Add</u> "The relevant government agency may collect ECLI in compliance with cl 3(1)(a) either:..."</p>	<p>We consider that the interaction between cls 3(1) and cl 3(2) is not clear and ask that it is made more obvious that the obligations in cl 3(2) are additional to the obligation in cl 3(1)(a) to collect only for a permitted primary or secondary purpose.</p>
Clause 3(4)	<p><u>Change</u> <i>"or disclosure of information only to the extent that the information is sourced from the LAS system"</i></p> <p><u>To</u> "or disclosure of ECLI only to the extent that the ECLI is sourced from the LAS system"</p>	<p>There is no definition of "information" in the Schedule. For consistency and clarity in drafting, we suggest changing "information" to "ECLI".</p>

ANNEXURE TWO: MARKED-UP CHANGES TO PROPOSED AMENDMENT NO 5 TO THE CODE – SCHEDULE 4

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, when making an. ~~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 approximate geographical position of a mobile device, including the latitude, longitude and/or 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~~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

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~~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 response agencies for the permitted primary purpose and permitted secondary purpose

permitted primary purpose means to enable an ~~emergency response agency~~emergency service provider to facilitate a response 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 agencyemergency service provider](#); 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 [that: \(a\) puts the caller in contact with the 111 emergency call service; and \(b\) is designated as an emergency 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 agencyemergency 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.

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 [in compliance with cl 3\(1\)\(a\)](#) 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](#) [emergency service provider](#) is restricted by this clause in its collection, use or disclosure of [information-ECLI](#) only to the extent that the [information ECLI](#) 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~~[emergency service provider](#) 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.

**ANNEXURE THREE: MARKED UP CHANGES TO
PROPOSED AMENDMENT NO 5 TO THE CODE - BODY OF THE CODE**

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~~emergency service provider

4. Amendment to clause 5 (rule 5)

Rule 5 is amended as follows:

- Insert:**
- (1A) Where a network operator discloses ~~location information~~ECLI 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 call ~~serviceline~~ or any other number that: (a) puts the caller in contact with the 111 emergency call ~~service~~, and (b) is designated as an emergency number as agreed by the location agencies from time to time ~~directed to the 111 emergency line~~

[REDACTED]

From: [REDACTED]
Sent: Thursday, 1 December 2016 12:14 p.m.
To: Submissions
Subject: Telecommunications Information Privacy Code Amendment Proposal

Good morning

My submission is simply that I support this proposed amendment.

Regards

[REDACTED]
EMPLOYMENT LAW BARRISTER

[REDACTED]

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[REDACTED]

From: [REDACTED]
Sent: Friday, 25 November 2016 3:56 p.m.
To: Submissions
Cc: [REDACTED]
Subject: Submission on Code change to help emergency services locate mobile callers

Thanks for the opportunity to make a submission on the proposed code change to help emergency services locate mobile callers referenced at <https://privacy.org.nz/blog/code-change-to-help-emergency-services-locate-mobile-callers/>

I generally support these amendments, which will enhance emergency services.

My concern I do not see addressed in the code is one relating to network charges for devices sending the proposed additional "high-precision location information" to the LAS. Currently if one uses location services which upload or transmit information this is **charged by the telecommunications provider as a data service**. I would suggest, that if this information is enabled to be automatically sent without the express permission of a user, then **any data charges or service charges should be zero rated** or otherwise cost free. This would be particularly of note for callers without data plans or other arrangements with their telecommunications service provider. Any use of the service should be noted on the relevant call telecommunications provider bill transcript much like any other enhanced or 'over the top' services.

Please contact me if any clarifications are sought.

Thanks,

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Subject:

FW: Proposed TIPC amendment - mobile emergency caller location information

Good afternoon, [REDACTED]

Thank you for offering Police the opportunity to comment on the proposed amendment to the Telecommunications Information Privacy Code 2003.

I am advised by our Communications unit that Police is fully supportive of this initiative for the operational benefits it will bring. I note that the Code will apply to NZ Police in respect of ECLI data. I also note that the limits in Schedule 4 on retention of the ECLI data will permit Police to keep a record of the information they relied upon as a "permitted secondary purpose" directly related to the primary one of establishing the location of an emergency caller.

Kind regards

Katherine Baird

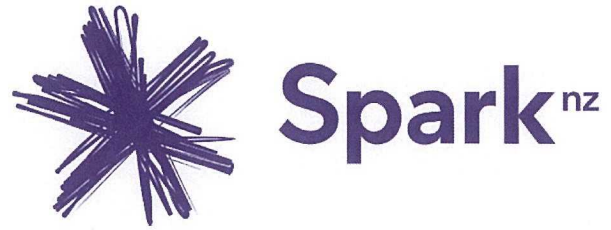
Legal Counsel: Information & Privacy | Legal Service Centre | New Zealand Police

[REDACTED]
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Safer Communities Together

THIS COMMUNICATION MAY BE SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE
[SEEMail]

[REDACTED]



Submission to Privacy Commissioner

Proposed Amendment No 5 to the
Telecommunications Information Privacy Code
2003

22 December 2016

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Introduction

1. Thank you for the opportunity to comment on the Proposed Amendment No 5 to the Telecommunications Information Privacy Code ("TIPC") 2003.
2. Spark understands and respects the value that customers place on privacy, and we take comprehensive steps to protect our customer's personal information. However Spark also takes a pragmatic approach to ensure the safety of its customers and others by choosing to rely on exceptions 11(1)(g) and (h) of the TIPC to release personal information when Spark believes on reasonable grounds that the disclosure is necessary to prevent or lessen a threat to public health or safety, or the life or health of an individual.
3. Spark has relied on these exceptions to date to provide location information of callers to 111 services, when requested by an Emergency Response Agency as Spark considers that it has reasonable grounds to believe that the disclosure is necessary to enable emergency services to respond to a potential threat to the life or health of an individual and assumes that a caller to 111 urgently requires the assistance from an Emergency Response Agency, and that location data can be critical to the successful and timely provision of those services.
4. Spark supports the Emergency Caller Location Information "ECLI" initiative to enable more timely provision of 111 caller location information to emergency services providers, and notes that ensuring that all parties involved have confidence that the Privacy Act 1993 and TIPC allow for the initiative is fundamental to its success.
5. Spark considers that the proposed amendment achieves this by providing helpful guidance on how the TIPC Rules apply to the provision of ECLI to emergency service providers. The proposed amendment also provides additional controls to ensure that the privacy of 111 callers is protected as far as practicable.
6. In this submission we suggest changes relating to:
 - a. The definition of Emergency Caller Location Information;
 - b. General duty of transparency;
 - c. General privacy protections.

Emergency Caller Location Information

7. Spark submits that the definition for Emergency Caller Location Information should be amended to reflect the fact that location information will be an approximation only.

Emergency Caller Location Information (ECLI) means personal information indicating the *approximate* 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

General duty of transparency

8. Spark agrees that providing customers with clear and comprehensive information on the operation of the ECLI system, and how customer privacy is protected is very important.
9. While individual agencies should provide high level information on the ECLI system to their customers, Spark believes that providing a single, trusted source for more detailed information will ensure consistency and promote public confidence. It is also the most efficient way to provide transparency to customers. Given the Ministry of Business, Innovation and Employment's (MBIE) role as project lead, Spark considers they would be best placed to prepare this content for hosting on a shared site operated by MBIE, with all other location agencies required to provide a link to this site on their own websites, together with high level explanatory information.
10. Spark submits that clause 4(3) should be extended to network operators, as it is not practical for network operators to advise of the collection of ECLI at the time of the call. Additionally while Spark does speak to 111 callers in the first instance before handing them to the appropriate emergency response agency, Spark considers that the privacy benefits of advising callers of the collection of ECLI are significantly outweighed by additional call time and the resulting delay in the provision of emergency services.

4(3) Subclauses (1) and (2) do not require an emergency response agency *or network operator* to notify an individual of the collection of ECLI at the time of an emergency call.

11. We also recommend that clause 4(3) is amended to make it clear that emergency response agencies and network operators are exempt from the requirements of Rule (2) of the TIPC to provide notification after ECLI has been collected. Customers are unlikely to be surprised that information that could assist with a response to their call was used for that purpose, and the cost and resource required to providing notification after the event would be burdensome for emergency service agencies and network operators.

General privacy protections

12. Spark supports the privacy protections provided to customers through the proposed controls on collection, use, disclosure and retention of the information.
13. To this end, Spark supports MBIE's submission to amend the "permitted primary purpose" to enabling "an emergency service provider to facilitate a response to an emergency call" as it provides an appropriate limitation on use of the information that:
 - supports the intention of the ECLI system, and
 - highlights that the purpose is not to trace individual callers, but to provide assistance to people who require emergency services.

Conclusion

14. Spark welcomes the clarity that the Proposed Amendment No 5 to the TIPC provides for the ECLI system. We are happy to provide any further information required on our suggested changes.

END



**Submission to Privacy Commission on:
Proposed Amendment No.5 to the Telecommunications Information Privacy
Code 2003**

December 2016

This submission is made by the New Zealand Telecommunications Forum Incorporated (TCF). The TCF is the telecommunications sector's industry body which plays a vital role in bringing together the telecommunications industry and key stakeholders to resolve regulatory, technical and policy issues for the benefit of the sector and consumers. The TCF enables the industry to work together and to discuss issues and topics collaboratively, to reach acceptable solutions that can be developed and implemented successfully. Its members represent 95% of the sector.

This submission sets out TCF members' collective views on the Proposed Amendment No.5 to the Telecommunications Information Privacy Code 2003 (**Proposed Amendments**). Individual members may be making their own submissions on aspects that are of particular importance to them.

The TCF welcomes the Proposed Amendments and is broadly supportive of them.

We have the following specific comments in relation to the proposed amendments:

Definition: ECLI Source

The definition of ECLI source requires that the mobile device sends the ECLI to the Location Area Service (LAS) system. While we agree with the intent of this definition, it is important to recognise that it won't always be possible for a network operator to deliver **exact** latitude, longitude and altitude data relating to a device.

For these reasons, the TCF proposes that the definition of **Emergency Call Location Information (ECLI)** be amended to read:

Emergency Caller Location Information (ECLI) means personal information indicating the approximate 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.

Clause 4 (Schedule 4)

This clause provides for a general duty of transparency. The TCF supports this concept.

The clause sets out the information to be made available by location agencies. The TCF suggests MBIE should, effectively as lead agency which will oversee the operation of the LAS system, take the lead in providing templates setting out how the information is to be provided, so that there is essentially a “single source” of the truth rather than each agency setting out their own requirements.

In addition, for sub-clause (3), the TCF proposes that this clause should relate to location agencies, not just emergency response agency. It is not practical for network operators to notify an individual of the collection of ECLI at the time of an emergency call. Such specific disclosure also appears unnecessary: the individual concerned should be aware of disclosure by virtue of the operation of the scheme, and the outcome of any response to an emergency call made from their mobile device.

Clause 6 (Schedule 4)

This clause provides that 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 and that 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.

The TCF proposes that again that MBIE should, as the lead agency overseeing the operation of the LAS system, develop this collateral in relation to the scheme. In addition, because of the automated nature of the solution, there seems no real need for network operators to develop specific information or training for their employees, beyond general privacy compliance training which already exists. In reality, the nature of the solution supporting the LAS system will not involve disclosure by individual employees or agents, nor will this information be generally available for search or disclosure after an emergency call has been made.

In addition, the privacy of customer's needs to be protected whenever possible. For this reason, the Proposed Amendments should include specific provision that emergency response agencies should not be able to intentionally use or store ECLI information to identify hoax callers. Where hoax calls are made, the agencies need to use the existing avenues available to them for this purpose.

Contact

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By email

22nd December 2016

To whom it may concern

Thank you for the opportunity to submit on Proposed Amendment No 5 to the Telecommunications Information Privacy Code 2003. We have noted the discussion in the Information Paper provided and reviewed the proposed changes.

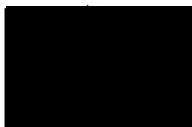
As the only independent, member based organisation that speaks for the users of telecommunications and information technology, we have a unique perspective on issues around the ICT industry and the services it delivers to users. Individual choice around privacy of information for users is a very important issue for our organisation.

However, we agree with the Commission that the lack of choice in this specific case is justified in light of the significant benefits that accrue from better response to emergency calls. This is even more so in the rural areas of New Zealand where it can be difficult for callers to correctly identify where they are if they are not familiar with the area.

We also strongly support the Commission's continued oversight of compliance with the code and these amendments.

Please do not hesitate to contact us if you require further information from TUANZ.

Yours faithfully



Craig Young
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