

Enhancing telecommunications regulatory and funding frameworks: Privacy Commissioner submission

Introduction

1. I welcome the opportunity to submit on this discussion document. My comments relate only to section 5 of the document: 'Enhancing information flow to the Emergency Location Information System'.
2. Under the Privacy Act 2020, the functions of the Privacy Commissioner include examining new legislation or proposed government policy for possible impacts on individual privacy. It is also part of the Privacy Commissioner's role to monitor emerging privacy issues, and to offer guidance on how people in industry, government agencies, and broader society can uphold their privacy obligations.
3. The Privacy Act applies to the collection, use, and sharing of personal information across the economy, upholding New Zealanders' privacy in interactions with public, private, and community organisations of all sizes. Ensuring the Privacy Act remains the primary legal framework governing personal information supports consistency and efficiency, and helps New Zealanders trust that their personal information is protected and respected.
4. My priority is to support good policy outcomes by advising on privacy matters and to ensure regulatory changes are consistent with the Privacy Act, or that there is a strong policy case for any departures from the Privacy Act framework.

Ensuring proposals are consistent with the Privacy Act

5. Telecommunications information is covered by the Telecommunications Information Privacy Code (TIPC), a Code of Practice issued under the Privacy Act to uphold privacy expectations and meet the needs of the telecommunications industry.
6. Telecommunications providers hold huge amounts of personal information about people, including highly sensitive information such as minute-by-minute location data. The TIPC provides a legal framework for the collection and use of this information subject to safeguards and oversight which protect privacy and preserve social licence.
7. My understanding is that the current consultation intends to maintain the Privacy Act and the TIPC as the primary legal framework governing the sharing of personal information in the telecommunications sector, and that any resulting regulatory changes are intended to be consistent with the Privacy Act. I support this approach.

Emergency location information

Upholding the Privacy Act and TIPC is important to preserve social licence

8. Section 5 of the discussion document focuses on the legal framework surrounding the Emergency Location Information System (ELIS), including the TIPC which is issued and administered by the Privacy Commissioner.
9. Schedule 4 of the TIPC supports use of location data in emergency responses. It provides a legal framework which permits network operators to share emergency location information to emergency services, while setting out safeguards and oversight that limit the risk of information being misused or of network operators and emergency services losing social licence. The previous Privacy Commissioner committed to reviewing the operation of these changes to avoid them being used for unanticipated purposes and ensure safeguards worked as intended.¹
10. The Privacy Commissioner is supportive of moves to consider policy around this legal framework, and to ensure it remains fit-for-purpose as the policy environment changes. Those changes include developments in telecommunications technology and markets, but also growing public awareness of and concern about privacy issues, and increased focus on maintaining social licence for appropriate use of people's sensitive information.

The preferred option presents privacy risks which need to be addressed

11. The discussion document frames the following policy problem (restated from the problem definition in the discussion document):

Currently telecommunications providers are permitted to share location information to emergency services under the TIPC, but **there is no legal requirement that telecommunications providers share this information**. While a voluntary contractual approach currently works well, this could change over time through decisions by current providers or new market entrants. If some providers choose not to support the ELIS in future, this could hinder the provision of location information for emergency responses, potentially putting lives at risk.

12. Two options are presented to address this problem:
 - **Option 1: status quo**, relying on voluntary contractual information sharing.
 - **Option 2: regulating provision of emergency location information through the Telecommunications Act (preferred)**.

¹ Privacy Commissioner, "[Code update to allow emergency services better access to location information](#)", (9 April 2020).

13. In my view, Option 2 raises potential privacy risks which need to be addressed. People use and rely on the services of telecommunications providers to access phone and Internet connectivity. Location information is generated to facilitate this provision of connectivity, and that is the reason that telecommunications providers hold it. With specified exceptions, the Privacy Act generally requires that information collected for a specific purpose can only be used for that purpose or a directly related purpose.
14. Recognising that location information can be extremely useful for the important public policy purpose of enabling an emergency response, the Privacy Commissioner has established specific provisions in Schedule 4 of the TIPC enabling that use of location information.
15. I welcome the proposed approach of retaining the TIPC as the legal framework for this sharing. However, a shift from voluntary to legally mandated provision of this information significantly changes the legal basis on which this extremely sensitive information may be shared and used in ways that are important for privacy and social licence.
16. Currently, people may take privacy into account when choosing a telecommunications provider, looking at their security practices and their broader approach to privacy issues. This was the background against which the Office of the Privacy Commissioner consulted on and established social licence for TIPC provisions enabling device location sharing to support emergency responses. The permissive rather than mandatory nature of this information sharing was specifically noted when reporting back on public consultation on TIPC amendments in 2020.²
17. The discussion document states that the current approach is working well, and the proposal to legally require that telecommunications providers share location information is put forward to address potential future risks, including choices by network operators.
18. I accept that this is a risk. At the same time, the fact that network operators can currently make an informed choice on whether to share customers' location information may also act to safeguard privacy and security interests. Network operators work to monitor and mitigate cybersecurity and privacy risks, including through choices about how they design their systems and how they share customer information. A legal requirement to share information takes away this choice and could expose location information to risks which a network operator has specifically worked to avoid in its own systems.

I recommend Option 1, but remain open to considering the policy case for Option 2

19. Based on the information I have seen so far, I would prefer to continue with the status quo and recommend Option 1.

² Privacy Commissioner, "[Amendment No 7 to the Telecommunications Information Privacy Code: Information Paper on the effect of the amendment](#)", (8 April 2020).

20. However, the Office of the Privacy Commissioner is open to considering Option 2 on the basis of a more detailed policy case. In particular, before seeing Option 2 progress we would like to see:
- What evidence there is of the potential policy problems identified;
 - Analysis of potential impacts that Option 2 may have on New Zealanders' privacy and on social licence for the sharing of telecommunications location information;
 - What steps could be taken to mitigate impacts on privacy and social licence, and credibly signal to New Zealanders that a law requiring sharing of their minute-by-minute location data will not lead to any broader requirement for collection, use, or retention information beyond that already established under the TIPC;
 - Details of the proposed requirements mentioned at paragraphs 93-94 for reporting, performance expectations, monitoring, and enforcement options. These would all have a significant bearing on privacy impacts and need to be presented and considered before deciding whether to proceed with Option 2;
 - Details on what changes to primary and secondary legislation would be needed to enable Option 2, including a legal assessment that no change to the TIPC would be required.
21. The proposed change to legally require provision of location information by network operators is likely to attract public interest. Providing a more detailed policy case could help to inform public submissions on the appropriate policy balance and social licence for this change.
22. In my view, taking steps to understand and mitigate potential privacy impacts from Option 2 will lead to better policy outcomes for everyone.
23. The Office of the Privacy Commissioner remains ready to assist with any questions.

Ngā mihi,



Liz MacPherson

Acting Privacy Commissioner