



Submission

Proposed Amendment No 7 to the Telecommunications Information Privacy Code 2003

About the New Zealand Council for Civil Liberties

1. The New Zealand Council for Civil Liberties is a watchdog for rights and freedoms in New Zealand. The Council is a voluntary not-for-profit organization that works through education and advocacy to promote a rights-based society and prevent the erosion of civil liberties.
2. We would welcome a meeting with the Privacy Commissioner to discuss our submission.

Introduction

3. Our submission concentrates on the big picture of what this amendment tries to achieve. The changes we recommend will also require many ancillary changes but we will leave this drafting work for the OPC rather than attempting to rewrite the whole.

Analysis of the proposal

4. We see this proposal to amend the Telecommunications Information Privacy Code (TIPC) as providing three separate main purposes:
 - a. Allowing people to opt-in to allow location tracking by emergency services.
 - b. Allowing emergency services to locate someone who they believe is at risk of serious harm.
 - c. Allowing emergency services to locate someone who they believe may intend to inflict serious harm on others.
5. Requests can only be made for emergency purposes defined as “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”. There appears to be no specification of the urgency or timeliness of the emergency so it could be made even if the threat was perceived to be in the future.
6. The process for making requests is not defined so is left up to the agencies to create. There is no requirement for the requests to be traceable back to an individual. There is no requirement for what information must be in the requests. The decision about whether to release the information is solely left up to the agency that is holding the information.
7. Oversight is solely provided by keeping a log of requests and sending a copy to the Privacy Commissioner every 3 months. The disclosure log is specified as listing whether the disclosure for an emergency, for auditing, or for another purpose. It does not have to contain the information used to justify the disclosure or the reasons given for the decision to disclose.

Our response

Location data

8. With most people these days carrying mobile phones that provide some degree of location tracking, this proposal enables tracking of the vast number of New Zealanders at will.
9. Location data is sensitive data. It can reveal information about what a person does and who they associate with. The use of location data to find people is highly invasive and should only be used when it can be justified.

10. We, referring in this case to both the NZ Council for Civil Liberties and the people of New Zealand, have resisted the idea that the government should be able to track the location of people without following proper procedures as defined in law.

Allowing people to opt-in

11. The first new purpose, allowing people to opt-in, does not appear to be contentious. People have the right to make information about themselves available to others if they wish to, and while we suspect that this scheme will not be very successful, we have no principled objection to it and will not make any further comment about it in this submission.

Allowing emergency services to locate someone at risk

12. The second new purpose, allowing emergency services to find the location of someone at risk, is an obvious significant extension of the existing ability to provide the location of those who have called 111.
13. As all seem to agree, the making of a 111 call looking for help can be seen as assumed permission to obtain and provide location information to the relevant emergency services. We support this interpretation.
14. Extending it to allow emergency services to access information of a person needed help without this implied permission is obviously more problematic. However, we accept that there are circumstances (e.g. someone who is lost or suicidal) where this information would be very useful and, importantly, that if the person was in sound mind or able to provide this information that they would do so.
15. Furthermore, the location information about the person is being used to help them. It is in their interests that their personal information is being released, not for the advantage of others.
16. Furthermore we are also concerned about the potential for emergency service workers to misuse the system to locate people for their own ends. The light-weight process and flimsy oversight provides little protection against this sort of abuse, and there would be no way for the location services to be able to detect it.
17. We believe that a useful safeguard would be mandatory after the fact notification to the person whose location data was accessed (possibly with a short delay for certain cases such as mental health crisis). This would allow the target to decide for themselves whether the release of the data was in their best interests. If they did not think it was they could then complain to the appropriate authority.

18. If emergency services are reluctant to access location data because of this notification, we question whether their intention really was to benefit the person whose information they are accessing.

Allowing emergency services to locate someone who they believe may harm others

19. We now come to the third new purpose, allowing emergency services to find the location of those who they believe may be intending to harm others.
20. There is no implied permission here. The person being located would not agree to it. The location information is not being used to help them. It is not in their interests for the information to be made available.
21. As such it does not seem to be an extension of the 111 emergency location system. Rather it appears to be a form of electronic surveillance performed against a target.
22. Electronic surveillance by emergency services, including Police, is handled under the Search and Surveillance Act. This includes rules and procedures for the use of tracking devices and accessing records through production orders.
23. The proposed procedures and oversight requirements in the TIPC fall short of the procedures detailed for obtaining a tracking warrant or production order in the Search and Surveillance Act.
24. We note that the Search and Surveillance Act does provide for urgent exercise of powers in an emergency situation provided that a suitable warrant or order is subsequently obtained.
25. The Search and Surveillance Act is the result of a comprehensive review of search & surveillance powers with the aim of bringing them all into a single Act. This proposed change to the TIPC would appear to be providing a separate way to perform tracking surveillance outside of this Act, and runs counter to the Act as passed by Parliament.

Purpose

26. The wording of the primary purpose says “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” but there is no requirement for that threat to be now or soon.
27. It would seem that this could justify a perceived threat hours, days or even weeks in the future, which would seem contrary to the purpose of this proposal for providing emergency access.

Process

28. We find the proposed processes to be insufficiently specified.
29. There are no requirements defined for the process by which location data should be accessed, other than the requirement that the agencies should create a process.
30. It seems to us that while the practical details of the process can be worked out by the agencies, that this Code should define minimum standards to allow for quality decision making and appropriate accountability.

Oversight

31. We find the proposed oversight measures to be insufficient.
32. The oversight mechanism seems to rely on notifications to the Privacy Commissioner, but there is no requirement to include the necessary information for anyone to determine whether the request was reasonable or not. Rather it appears to be more high-level statistical reporting.
33. Any real oversight must have the ability to review decisions, and therefore requires the information that the decision was based on.
34. This then will place a duty on the Privacy Commissioner to review the reports to check the decisions that were made.
35. Furthermore we approve of the Commissioner's intention to review the operation of these extensions at some point in the future, but without proper reporting we wonder what this review will be based on.

Conclusion

36. It seems to us that this code does two very different things. The first is a reasonable extension of the current emergency location provisions, whereas the second is an attempt to provide a way to work around the restrictions in the Search & Surveillance Act.
37. It is not appropriate for the Telecommunication Information Privacy Code to provide an end-run around the Search & Surveillance Act.
38. The control of and access to location data is a sensitive matter and the importance of this is likely to increase rather than decrease as various forms of tracking continue to get cheaper and easier to implement.

39. The proposed extensions to the Code do not seem to be well thought through, and both the processes and oversight are insufficient to provide faith in the use of the system.

Recommendations

40. The New Zealand Council of Civil Liberties makes the following recommendations:

41. That we agree that the TIPC should be extended as proposed to allow releasing location information to emergency services in an emergency for the benefit of the person whose location is being released; subject to the next point:

42. That any emergency service access of location information must then be notified to the target after the fact, along with the necessary information to appeal the release.

43. That the TIPC should expressly forbid the voluntary release of location information to emergency services where it is not done for the benefit of the target person. Rather any release of location information for this purpose should be done under the auspices of the Search & Surveillance Act.

44. For the purpose, that a sense of urgency or timeliness be added as a requirement when used justify access to location data.

45. For the process we recommend that the Code should specify minimum standards to follow to ensure that the decisions made are based on sufficient information and are accountable.

46. We further recommend that protections be put into place to prevent emergency service workers from abusing the system for their own purposes, possibly by requiring supervisory sign-off on all requests or some other suitable mechanism.

47. For oversight, we recommend that the disclosure logs must contain all of the information provided when the request was made, alongside any additional information that was relied on to make the decision.

48. Finally, we recommend that the Privacy Commissioner must set up procedures to review disclosure decisions that were made.
