

# submission

Submission by Privacy NSW  
on the

**Australian Communications Authority Discussion Paper:  
*Location Location Location: the future of location information  
to enhance the handling of emergency mobile phone calls***

*Issue date: 21 May 2004*



privacy**nsw**

**Australian Communications Authority Discussion Paper:  
Location Location Location: the future of location information to enhance the  
handling of emergency mobile phone calls, January 2004**

About Privacy NSW

Privacy NSW is the Office of the NSW Privacy Commissioner. The Privacy Commissioner is the holder of an independent statutory office, created by Parliament under the Privacy and Personal Information Protection Act 1998.

The Privacy Commissioner's functions include making public statements about any matter relating to the privacy of individuals generally, and publishing reports and recommendations about any matter that concerns the need for, or the desirability of, legislative, administrative or other action in the interest of the privacy of individuals. We may therefore make a separate submission to the ACA regarding their discussion paper.

This submission reflects the views of the NSW Privacy Commissioner. It does not reflect the views of the NSW Government.

Overview

Privacy NSW recognises that location information has the potential to enhance response to emergency mobile phone calls. However a costs-benefit analysis of the use of the technology for this purpose should include an assessment of privacy risks at an early stage in the consideration, design and application of the technology. Location information is a particularly sensitive kind of personal information that can have intrusive consequences on an individual's privacy if misused. The application of location information technologies to purposes other than emergency response, such as commercial applications and law enforcement purposes, increases the potential for privacy intrusive conduct by business and government. It is in the public interest that proposed applications of location information technology incorporate a systematic assessment of the impact on privacy at the earliest possible stage. Moreover, the successful development and application of location information technology is partly dependent on the confidence of users that their privacy will not be violated or unreasonably interfered with.

Location information

Location information relates to persons who own and/or use technology that records location information, including mobile phones. As such, it is considered to be personal information. If this information is unreliable, the sensitivity of the information may increase since it creates the danger of erroneous assignment

between persons and facts.<sup>1</sup> The large capacities and possibilities of digital mobile networks for processing personal information increases the privacy risks associated with location information.

As the ACA's paper recognises, location information has commercial applications beyond the object of improved emergency services response. There are many other application of location information technology, which have serious implications for personal privacy. These include:

- Tracking of children and young people by parents
- Tracking of employees by employers
- Tracking of 'suspicious persons' by law enforcement agencies.<sup>2</sup>

It is a basic principle of information privacy protection that information is only collected, used and disclosed with the consent of the individual or with other lawful authority. Given the privacy intrusive potential of the location information technology, Privacy NSW believes that the circumstances in which a user's consent to the way that their personal information is handled can be overridden should be strictly limited.

### Privacy impact assessment

The ACA's paper invites comment on any key regulatory issues that may need to be addressed prior to the introduction of location based services or location techniques in Australia and how they could be resolved (p.9). Privacy protection is a key regulatory issue that should be addressed before the introduction of location information technology.

A privacy impact assessment is a systematic process for evaluating a proposal in terms of its impact upon privacy. A privacy impact assessment should be carried out at an early stage in the consideration and development of location information technology in order to identify privacy risks and manage those risks appropriately. For example, a consequence of disclosure of location information may be that it could act as a deterrent to the reporting of emergencies from people who 'do not want to get involved'. A privacy impact assessment would consider whether and how such a consequence could be avoided or minimised by improving privacy protection, for example by limiting the availability of location information to third parties, and/or enabling individuals to control whether location tracking technology is turned 'on' or 'off'.

The level of privacy protection may vary depending on the purpose for which location information technology is used. For instance, in commercial applications of the technology Privacy NSW believes that it would be appropriate to ensure that individuals can choose whether location information is available to companies selling goods and services. This is in line with privacy laws regulating other technologies such as email (*Spam Act 2003* (Cth)). On the other hand, if a call is made to the

---

<sup>1</sup> Prof Dr Hansjurgen Garstka, Data Protection and Freedom of Information Commissioner of the State of Berlin, Germany, *Location Data as Personal Data*, paper presented to the International Conference on Personal Data Protection, Seoul 2002 (p.2)

<sup>2</sup> Ibid p.1

emergency call service, it may be in the public interest to automatically override an individual's choice to 'switch off' location tracking technology for the purpose of responding to the call. This is consistent with the European Union Directive on privacy and electronic communications where the absence or refusal of consent can only be overridden for the specific purpose of responding to the emergency call.<sup>3</sup>

A privacy impact assessment would consider whether the existing regulatory environment adequately addresses the privacy risks associated with the application of location information technology for particular purposes. Privacy NSW believes that existing privacy laws, notably the Federal *Privacy Act 1988*, generally provide a sound framework for privacy protection in the context of applied location information technology. At the same time, it may be necessary to augment existing privacy laws to provide for specific privacy protections relating to location information.

The case for specific regulation may be strong given the different scope of Federal and State privacy laws and the public interest in consistent privacy protection regardless of geographical location. For example, the NSW *Privacy and Personal Information Protection Act 1998* (PPIP Act) generally exempts the NSW Police from complying with the privacy principles in the PPIP Act; State owned corporations are also exempt from the PPIP Act and are not generally bound to comply with the Federal *Privacy Act*.

### Function creep

Whenever new technology makes available a new source of personal information, there is likely to be a demand for subsequent applications of the technology that go beyond the purpose(s) originally envisaged for the technology. Otherwise known as 'function creep', the use of technology for secondary purposes poses a significant risk to privacy, particularly if no assessment of specific privacy risks is made before the technology is applied for these purposes.

Privacy NSW notes the likelihood that location information will be in demand by government and business for a wide range of broadly defined purposes beyond the primary purpose considered in the ACA's paper (ie. to enhance the emergency call service). The use of location information for such purposes as commercial applications and law enforcement has the potential, in the absence of appropriate regulation, to result in privacy intrusive conduct that exceeds public expectations and knowledge. It is in the public interest that a separate privacy impact assessment is conducted for any purpose for which it is proposed to use location information technology, and that associated privacy risks are appropriately addressed.

While we would not oppose the use of location information for commercial purposes *per se* or, in special limited circumstances, for the purposes of law enforcement, appropriate limits should be placed on the use of location information for these purposes. For example, users should be able to control whether businesses can access and use location information for commercial purposes. In the case of law enforcement, access to and use of location information for purposes should be

---

<sup>3</sup> Directive 2002/58/EC of 12 July 2002, available online at <http://europa.eu.int/scadplus/leg/en/lvb/l24120.htm> (see especially Article 10)

strictly controlled and accountable in a similar manner to other forms of surveillance such as telephone interception.

### Conclusion

Privacy NSW recognises that the use of location information technology for the purpose of emergency services response may be in the public interest. A costs-benefit analysis of the use of the technology for this purpose should include a privacy impact assessment at an early stage in the consideration and design of the applied technology. Privacy NSW does not support an approach that advocates broad applications of a technology that may exceed public expectation of the use of such technology and unreasonably intrude on the privacy of individuals.