



Australian Government
Attorney-General's Department

National Security
Resilience Policy Division

09/27587-01

15 September 2010

Dear Dr Clark

via e-mail: roger.clark@xamax.com.au / chair@privacy.org.au

Thank you for your letter of 27 August 2010 in respect to the Privacy Impact Assessment (PIA) conducted by Information Integrity Solutions (IIS) on the possible development of a location-based mobile telephone emergency warning capability.

The Attorney-General's Department (AGD) appreciates the Australian Privacy Foundation's (APF) consideration of the PIA.

Process Issues

In your comments you make note of concerns in relation to the consultation process undertaken by AGD in relation to the PIA. The process for establishing the feasibility of this capability has been characterised by challenging timelines. This has resulted in a very short period of time being available to AGD to both engage a consultant to author the PIA and initiate consultation with organisations such as yours.

A feasibility study of the capability was due to be delivered to the Council of Australian Governments (COAG) out-of-session at the end of July 2010. The PIA was undertaken to inform that feasibility study. However, before the PIA could be conducted, extensive engagement with the telecommunications carriers was required to determine a viable model and work through the technical complexities of the capability. This carrier engagement process commenced in late February 2010, after the responses to a Request for Information to the market (released in August 2009 and closed late October 2009) were assessed by an independent technical consultant, with the conclusion being that direct engagement with each of the three carriers was needed to determine feasibility. Consequently, AGD was not in a position to engage IIS to conduct the PIA until June 2010, which left very little time to finalise the report prior to the need to submit it to COAG for consideration.

As a result of the tight project timelines, AGD did not believe there would be opportunity to incorporate the feedback from advocacy groups into the PIA prior to the end of July 2010. However, as noted in section 5.6 of the PIA, "AGD has undertaken to ensure that input from ACCAN, the APF and EFA is incorporated into the PIA and considered by governments in the preparation of protocols and guidelines underpinning the operation of the capability, should it be implemented". This reflects that, at this point in time, there has been no agreement by governments

to proceed with the development of the capability. If such agreement is reached, following COAG consideration, AGD will re-open the PIA with a view to incorporating your input and the input provided by other advocacy organisations.

This approach was considered a positive way to provide advocacy organisations with the opportunity to provide input. It also reflects the fact that the input was likely to be highly relevant to the development of processes, rules and guidelines underpinning the operation of the capability but was unlikely to result in a recommendation that the development of the capability not proceed, particularly in light of the consideration of this issue by the Victorian Bushfires Royal Commission. This conclusion is consistent with the input that has been provided to AGD to date.

Proposal Issues

Operational Use of Mobile Phone Identifiers

As APF has noted, the system design involves no disclosure of data beyond the carrier. This design was very deliberately arrived at, largely to ensure that privacy concerns were minimised.

Retention of the Data

In section 12.6 of the PIA it is stated that “Telecommunication carriers are required to keep the information in case it is needed for an inquiry or royal commission relating to the handling of the emergency”. You state that no explanation is provided in respect to why the need exists. Data needs to be retained for long enough, post-incident, to establish whether a Royal Commission or coronial inquiry is likely to result from a particular emergency incident where the location-based mobile warning capability was deployed. Strict parameters will be put in place regarding the manner in which it will be stored and in respect to its appropriate destruction, consistent with Recommendations 5 and 6 of the PIA.

Scope of Use

You state that the PIA does not provide clear information about the circumstances in which it is envisaged that the scheme could be applied. Section 12.4.4 of the PIA, states that “Decisions by State and Territory warning authorities on whether to activate the location-based mobile warning capability will be based on the specific circumstances of the incident and in accordance with jurisdictional legislative authority and formalised authorisation processes”. A legislative instrument, titled *Telecommunications (Data for Emergency Warning Systems) Instrument 2010*, (the 2009 version of which was quoted on p. 12 of the PIA), lists the relevant pieces of State and Territory emergency/disaster legislation, the sections within these pieces of legislation that contain definitions of ‘emergency’ and ‘disaster’ and outlines those positions under law that have the authority to trigger the existing telephone-based emergency warning capability. The Instrument is enclosed for your reference.

The words ‘in an area experiencing an emergency’ (section 1.3 on p.5) reference the nature of the warning method, as opposed to the circumstances under which it would be activated or deployed, i.e. warnings will be sent to mobile phones that are in an ‘area’ or ‘geographic location’ that is experiencing an emergency – an ‘emergency’ being an incident that falls within State and Territory legislative definitions of an ‘emergency’ or ‘disaster’. In relation to “an emergency occurs or is deemed likely to occur”, this reflects the fact that it is preferable to warn communities of an emergency or disaster before it occurs if this is possible.

In relation to APF’s comments that “no assessment has been performed to the extent to which telecommunications carriers are actually constrained by law in relation to use of the data”, “urges a

check of the legal constraints on telecommunications carriers...as part of the PIA process” and “is seriously concerned that no clear rules concerning invocation of the scheme appear to have been specific, and hence function creep appears to be uncontrolled”, carriers are only permitted to use personal information in a manner that is permitted by legislation. If carriers wished to pursue using the personal information generated from using the location-based mobile warning capability for other purposes, those purposes would need to be ones that Australia’s legislative framework allowed for. Section 270 of the *Telecommunications Act 1997* (attached) only allows for the use of protected information in limited circumstances.

Under the arrangements that would be established should the implementation of a location-based mobile warning capability proceed, carriers would be deploying the capability only if instructed to do so by a State or Territory. Carriers would develop the capability for State and Territory governments so that it could be harnessed to better warn the community when they are most vulnerable.

Current Status and Next Steps

As indicated in the letter to you from IIS, should a decision be made by governments to proceed with implementation of the capability, your input will be provided to State and Territory governments for their consideration to assist in informing the development of protocols and guidelines that will underpin the capability’s operation. This process will be facilitated by incorporation of your feedback into the PIA.

I hope that the clarification and additional information provided in this letter addresses the issues you have raised. Should you have any questions please don’t hesitate to contact me.

Yours sincerely



Diane Podlich
Director
Emergency Warning and Communications Section
E-mail: diane.podlich@ag.gov.au