

Requests for call recordings

Dear provider,

This practice statement gives information and guidance to providers about what to do when receiving requests from Utilities Disputes for call recordings in relation to a complaint. Relevant provisions are set out in the attached appendix.

Information requests - what we need and why

The type of information needed to investigate a complaint varies from case to case. Often the information I need is available as a recording of a phone call a provider has had with a customer.

Call recordings are sometimes the best way to obtain the information, and sometimes the best information there is. For example, if a complaint is about the way the caller believes they were spoken to by a staff member of the provider, both the words said and the way they were said will be important. In these cases, a transcript of the call will not give my office the information we need.

To handle a complaint effectively and efficiently, I may need an opportunity, possibly more than once, to listen to the call recording and form a view about it. This is why conciliators ask for a copy of a call recording.

Some providers have offered to play a call recording over the phone instead of providing a copy of the call recording. This is not an acceptable alternative. It is not practical to arrange with the provider to listen to a call recording, sometimes at short notice, with all parties present. My need to be independent and to be seen to be independent would be undermined by listening to call recordings with one party and not the other.

The Scheme document¹ says a provider may refuse to provide information if:

- the provider certifies it is legally privileged,
- the provider does not have it, or
- to supply it would breach a third party's confidentiality.

The issue

A provider has told us it has a policy to not provide call recordings. The provider said the Privacy Act allowed it to not provide call recordings because the call recording would disclose confidential information about the staff member who handled the call.

¹ GR27 – see appendix 1 to this report.

I believe this is not the correct interpretation of the Privacy Act, as the information about the third party in the call is provided by that person in the first place and does not meet the criteria for information the provider can refuse to disclose. The basis given also does not trigger GR27. The intention of GR27 is to address disclosure of confidential commercial information, not personal information.

In most cases, recordings of calls between complainants and providers contain personal information about the complainant. Complainants are entitled to access this personal information. This means unless the provider is entitled to refuse to disclose the personal information, the complainant is entitled to the call recordings under the Privacy Act. Part 4 of the Privacy Act sets out the basis on which a provider may refuse to disclose personal information to an individual.

The relevant section of Part 4 is S29, which states an agency may refuse to disclose information if it would involve the unwarranted disclosure of the affairs of another individual.

The Privacy Commissioner's view

The Office of the Privacy Commissioner (the OPC) advises it would generally not consider information in a call recording (for example a customer service officer's name, occupation, or name of their employer) as "affairs" of an individual, removing the only justification for refusing access. It is not permissible under the Privacy Act to create a category of information that will never be provided to an individual making a request.

The OPC also notes to trigger S29(1)(a) the information needs to be information not already available to the person receiving it. Any information contained in the call recording has already been disclosed to the caller during the call. To withhold information under this section, the provider would need to turn its mind to the information contained in the recording and provide reasons why, in the circumstances of the case, the disclosure would be "unwarranted". If the provider considers in the particular circumstances the disclosure of a call recording would lead to the unwarranted disclosure of the affairs of the employee, the provider is then required to consider providing the information in some other way, and that decision can be reviewed by the OPC.

The reason why the complainant wants the information, or the purpose to which it will or may be put, is not, according to the OPC, an automatic basis to refuse to disclose it and could amount to an interference of the person's privacy by refusing access on the wrong ground. The OPC further advises the information requested should be provided in the form requested by the individual, if possible.

The OPC also advises that any organisation concerned about protecting its employees' rights to privacy could have its employees undertake training to avoid disclosing their own personal information when taking calls. The OPC has free online training on its website <https://privacy.org.nz/further-resources/online-e-learning-privacy-modules/> I would consider this approach good industry practice because it would address the issue raised and enable my

office to receive the information it needs to investigate and resolve complaints efficiently and effectively.

Way forward

Providers need to respond to call recording information requests in accordance with the Scheme document and this practice statement.

If I consider a provider's actions involve a material or persistent breach of the Scheme document, I am required to refer the matter to the Board, which, if it agrees, is obliged to inform the relevant Minister².

If you have any questions about this practice statement, please contact me on 04 914 4523 or n.moreau@utilitiesdisputes.co.nz or James Blake-Palmer, our privacy officer, on 04 914 4537 or j.blake-palmer@utilitiesdisputes.co.nz

Yours sincerely,



Nanette Moreau
Commissioner

Appendix 1 – Excerpt from the General Rules of the Energy Complaints Scheme

- 27 *A Provider must promptly provide UDL with information UDL requests to assist in dealing with a Complaint. This does not apply if the provider provides a certificate to UDL confirming:*
- a the disclosure would cause the Provider to breach its duty of confidentiality to a third party who has not consented to disclosure, despite the Provider using best efforts to obtain such consent,*
 - b the Provider does not have information requested, or*
 - c providing the information would breach a Court order or legal professional privilege, or would prejudice a current investigation by the New Zealand Police or another law enforcement agency.*

A full copy of the Scheme document is available on the website at www.utilitiesdisputes.co.nz or by calling 0800 22 33 40.

² Minister of Commerce and Consumer Affairs.

