Investigation Report

File No.	ACMA2012/639-9
Carriage Service Provider	Localsearch Operations Pty Ltd ACN 130 550 971
Type of Service	Public Number Directory publisher
Relevant Legislation/Code	*Telecommunications Integrated Public Number Database Scheme 2017*
Date	9 April 2020

Findings

The Australian Communications and Media Authority (the **ACMA**) finds that Localsearch Operations Pty Ltd ACN 130 550 971 (**Localsearch**) contravened the *Telecommunications Integrated Public Number Database Scheme 2017* (the **IPND Scheme**) because:

> it released a document containing customer data relating to one unlisted number after being notified by the Integrated Public Number Database (**IPND**) Manager of the number's change from listed to unlisted in the IPND, in contravention of subparagraph 3.12(9)(c)(i);

> it did not destroy securely all the customer data in its possession relating to the unlisted number within 10 business days of being notified by the IPND Manager of the number's change from listed to unlisted in the IPND, in contravention of paragraph 3.12(9)(d);

> it failed, after receiving a complaint about the use or disclosure of a customer's information in a public number directory (**PND**) it publishes, to inform the customer:

> > i. that if they were dissatisfied with the way in which the complaint was handled, the customer could make a complaint to the Information Commissioner[1], and

> > ii. of the contact details of the Information Commissioner,

> in contravention, respectively, of subparagraph 3.12(15)(a)(i) and paragraph 3.12(15)(b);

> it failed to notify the ACMA in writing as soon as practicable after becoming aware that it had breached a relevant requirement, in contravention of paragraph 3.12(21)(c); and

> it failed to take all reasonable steps to minimise the effects of the issue as soon as practicable after becoming aware that it had breached a relevant requirement, in contravention of paragraph 3.12(21)(d).

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[1] Where a disclosure involves interference with the privacy of a customer, the IPND Scheme requires the publisher to inform the customer that they may make a complaint to the Information Commissioner (along with contact details).

The IPND Scheme

1. The IPND is an industry-wide database maintained by Telstra Corporation Limited (in this capacity, the **IPND Manager**) under the *Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 2019*.

2. The IPND was established in 1998. It supports critical purposes including the provision of the emergency call service, the emergency alert system and use by law enforcement and national security agencies. Other purposes include the publication of PNDs (as defined at subsection 285(2) of the *Telecommunications Act 1997* (the **Act**)), providing directory and location dependent carriage services, and for undertaking approved electoral, public health and government policy research.

3. The IPND Scheme is made by the ACMA under section 295A of the Act. It provides for the granting of authorisations to access the IPND for the publication of PNDs, and for undertaking approved research. It also sets out some of the conditions to which a final authorisation is subject, including the conditions specified in section 3.12 of the IPND Scheme.[2]

Background

4. Localsearch was granted a final authorisation to publish a PND by the ACMA under the IPND Scheme on 10 August 2009.

5. In October 2019, the ACMA became aware that Localsearch may have published a customer's unlisted phone number, name and residential address (**Customer Data**) in one of its hardcopy PNDs, notwithstanding that Localsearch had previously been informed by the IPND Manager that the number had changed from listed to unlisted.

6. On 15 January 2020, the ACMA commenced an investigation under subsection 510(1) of the Act into whether Localsearch had contravened the IPND Scheme.

7. On 21 February 2020, the ACMA gave preliminary contravention findings to Localsearch. Localsearch responded on 6 March 2020 and did not dispute the ACMA's preliminary findings.

Reasons

Release of unlisted Customer Data

8. Under subparagraph 3.12(9)(c)(i) of the IPND Scheme, it is a condition of final authorisation that a PND publisher must not, after being notified by the IPND Manager that a listed number has become unlisted, release any document or database containing any of the customer data relating to that number.

9. Localsearch stated that the IPND Manager's datafile extracted by Localsearch on 16 May 2019 flagged the customer's number as having changed from listed to unlisted. It was included in a Localsearch directory printed on 12 August 2019. As such, Localsearch released a directory containing the Customer Data after being notified by the IPND Manager that the number had become unlisted.

10. The ACMA therefore finds that Localsearch contravened the condition of its final authorisation specified in subparagraph 3.12(9)(c)(i) of the IPND Scheme.

Destruction of Customer Data

11. Under paragraph 3.12(9)(d) of the IPND Scheme, it is a condition of final authorisation that a PND publisher destroy all customer data in its possession relating to an unlisted number within

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[2] Further conditions are also set out in the *Telecommunications (Integrated Public Number Database Scheme – Conditions for Authorisations) Determination 2017.*

10 business days of being notified by the IPND Manager that the number has changed from listed to unlisted.

12. Based on dates provided by Localsearch, it did not securely destroy all customer data in its possession relating to the customer's unlisted number within 10 business days of being notified by the IPND Manager of the number's change from listed to unlisted. As noted above, Localsearch stated that the IPND Manager's datafile extracted by Localsearch on 16 May 2019 flagged the customer's number as having changed from listed to unlisted. It was not destroyed within 10 business days, as it was included in a Localsearch directory printed on 12 August 2019.

13. The ACMA therefore finds that Localsearch contravened the condition of its final authorisation specified in paragraph 3.12(9)(d) of the IPND Scheme.

Information about complaint

14. Subsection 3.12(15) of the IPND Scheme sets out obligations on a PND publisher if a customer makes a complaint about the use or disclosure of the customer's information in a PND published by the publisher. Where the customer is an individual whose complaint to the publisher involves an act or practice that may be an interference with the privacy of the individual, the publisher must:

    a. inform the customer that if the customer is dissatisfied with the way in which the complaint is handled, the customer may make a complaint to the Information Commissioner (subparagraph 3.12(15)(a)(i)); and

    b. give the customer information about how to contact the Information Commissioner (paragraph 3.12(15)(b)).

15. The Customer Data contained the customer's name, address and phone number, which is personal information[3]. The customer had tried to keep this information private by changing their phone number to an unlisted number. Accordingly, Localsearch's action has interfered with the privacy of the customer.

16. Localsearch has not claimed that it provided this information to the customer, nor has it contested the ACMA's preliminary contravention finding in relation to the obligation.

17. The ACMA therefore finds that Localsearch contravened the conditions of its final authorisation specified in subparagraph 3.12(15)(a)(i) and in paragraph 3.12(15)(b) of the IPND Scheme.

Notification of contravention to the ACMA

18. Under paragraph 3.12(21)(c) of the IPND Scheme, it is a condition of final authorisation that a PND publisher must, as soon as practicable, notify the ACMA in writing in the event the publisher contravenes a relevant requirement (a term which is defined in section 1.4 of the IPND Scheme to include the conditions of final authorisation referred to above).

19. The customer stated that they notified Localsearch that it had published their Customer Data on 25 September 2019 and Localsearch does not dispute this date. The ACMA made contact with Localsearch about this matter on 17 October 2019, and at this time Localsearch had not notified the ACMA of the contravention.

20. Based on this information, and that Localsearch did not dispute the ACMA's preliminary finding, Localsearch did not notify the ACMA in writing as soon as practicable after being made aware that it had contravened relevant requirements.

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[3] 'Personal information' is defined at subsection 6(1) of the *Privacy Act 1988* as information or an opinion about an identified individual, or an individual who is reasonably identifiable: (a) whether the information or opinion is true or not; and (b) whether the information or opinion is recorded in a material form or not.

21. The ACMA therefore finds that Localsearch contravened paragraph 3.12(21)(c) of the IPND Scheme.

Minimise, as soon as practicable, effects of contravention

22. Paragraph 3.12(21)(d) of the IPND Scheme requires that a PND publisher must, as soon as practicable, take all reasonable steps to minimise the effects of the publisher having contravened a relevant requirement.

23. The customer stated that they notified Localsearch on 25 September 2019 that it had published their Customer Data and Localsearch does not dispute this date.

24. However, it was not until 21 October 2019 that Localsearch took reasonable steps to minimise the effects of publishing the Customer Data and resolved the matter to the customer's satisfaction. The ACMA has confirmed this resolution and its timing with the customer. However, this occurred almost one month after the date the customer first contacted Localsearch. While there may be circumstances in which the reasonable steps taken to minimise the effects of a contravention take longer than they took in this case, the fact that Localsearch did not contact the customer about minimising the effects of the publication for 26 days indicates it did not take steps as soon as practicable.

25. Based on this information, and that Localsearch did not dispute the ACMA's preliminary finding, Localsearch took reasonable steps to minimise the effects of the issue caused by its contraventions of the condition specified in subparagraph 3.12(9)(c)(i) of the IPND Code, but it did not do so as soon as practicable.

26. The ACMA therefore finds that Localsearch contravened paragraph 3.12(21)(d) of the IPND Scheme.