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April 22, 2015

Christopher Prince

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Bruce Wallace

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Sent via email:

Christopher.Prince@priv.gc.ca and Bruce.Wallace@ic.gc.ca

Dear Christopher and Bruce

Subject: Draft Transparency Report Guidelines – Rogers Comments

1. On April 1, 2015, the Office of the Privacy Commissioner (OPC) hosted a roundtable to discuss guidelines for the content of Transparency Reports issued by the telecommunications industry. Rogers Communications ("Rogers") attended this meeting along with other wireless carriers, communications content service providers, and representatives from both Industry Canada and Public Safety Canada.
2. During the April 1 meeting, both the OPC and Industry Canada presented proposals for guidelines to be followed by any company issuing a Transparency Report. It was indicated at this meeting that any guidelines adopted would fall short of regulation, but would be regarded as more substantive than voluntary guidelines. Comments regarding both proposals were sought from industry.

Background

3. Customer privacy is a priority for Rogers, and our Privacy Policy and Terms of Service outline our policies and procedures regarding customers' information. We fully comply with

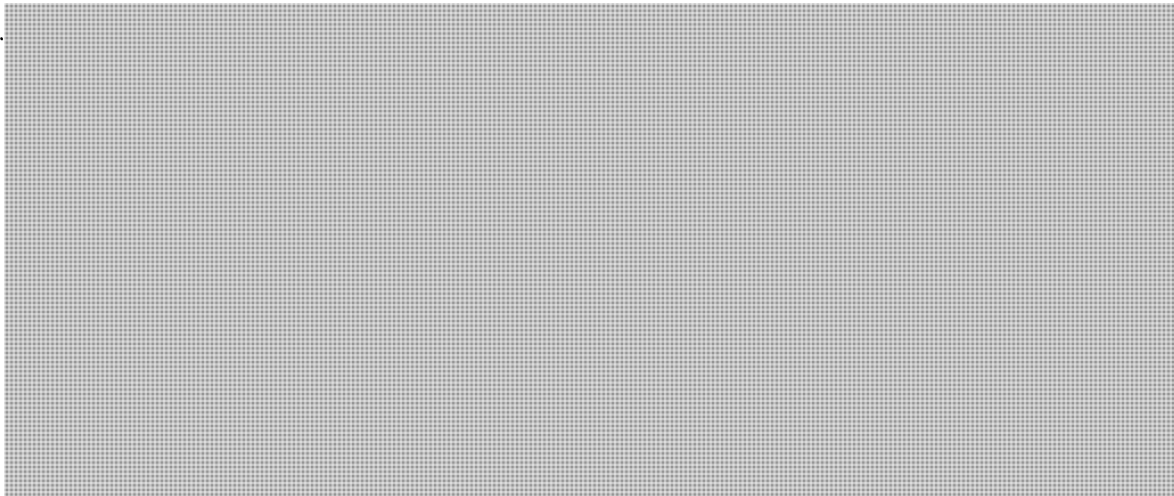
Canadian privacy law and take active steps to safeguard our customers' personal information.

4. As a communications company, from time-to-time government and law enforcement agencies approach us looking for information about our customers. We only disclose this information to these bodies when required by law, such as with a search warrant or in emergency situations.
5. Rogers issued its first Transparency Report in early 2014, following concerns from our customers regarding how, and what, information is shared with government and law enforcement agencies. We have since issued a second Transparency Report, where we fine-tuned the way we presented statistics. For example, for 2014 we reported the number of times we refused a request or where no customer information was provided. Also, for 2014 we reported the number of emergency requests we get from 911 operators.
6. Rogers is committed to continued transparency with our customers and we intend to issue a Transparency Report annually.

Guideline Proposals

7. We commend both the OPC and Industry Canada in taking a leadership role to establish a standard set of guidelines for companies issuing Transparency Reports. This will be beneficial to all stakeholders. In setting the guidelines, we encourage both the OPC and Industry Canada to ensure that they remain as simple as possible. Simplicity will allow companies to track requests from law enforcement agencies and report such requests without the need for new processes, procedures or reporting systems.
8. It is, however, unclear to Rogers whether the intent is for the guidelines to be applicable only to those parties who wish to issue a Transparency Report, or if it will be mandatory for telecommunications carriers to issue such a report. If it is the latter, we encourage the mandatory reporting requirement to also apply to requesting bodies, such as law enforcement.
9. Overall, Rogers supports the proposal put forward by the OPC and Industry Canada. While we do not track some of the some metrics proposed, there would be minimal process and systems changes required to track the data elements and include them in our future Transparency Reports.
10. However, the proposal from the OPC to further disaggregate certain metrics would require substantial system changes – for example reporting the percentage or number of preservation demands or orders accepted. As well, additional resources would be required for the analysis needed to report data points by percentage or number of requests accepted or disclosures made. For these reasons, Rogers recommends against making such a breakdown mandatory. It should be left up to the individual company reporting to provide this added layer of reporting if they have the capabilities to do so.

11.



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12. Industry Canada's proposed guidelines included reporting voluntary disclosures. Rogers does not voluntarily disclose information without an appropriate court order or legal authority, and therefore, would not have numbers to report for such data sets. Given that Rogers, and possibly other telecommunications, does not disclose such information, it should be optional whether these types of metrics are reported as zero or not applicable.
13. Industry Canada's guidelines also included a number of proposed limitations. In order to keep Transparency Reports as simple as possible, Rogers recommends keeping such limitations to a minimum or allowing those issuing Transparency Reports to determine if a particular limitation makes practical sense. For example, regarding Industry Canada's proposed "Limitation A" that any figure between 0 and 100 should be represented in a band of '0-100'. This limitation may be useful if the reporting company only has a few thousand customers; however, for companies with large customer bases such as Rogers this limitation is less relevant. We recommend that any such limitation be voluntarily applied by the company reporting if it makes practical sense in the particular set of circumstances.
14. Further, Rogers recommends against implementing Industry Canada's proposed "Limitation C", which requires a six month delay from the end of a reporting period before a Transparency Report can be released. At the April 1 roundtable, it was indicated that this limitation is a specific request made by law enforcement in order to not compromise an active investigation. It is unclear to Rogers how reporting aggregate numbers in a category could be tied back to a particular investigation.
15. Rogers believes that timeliness and accuracy of information are important parts of a Transparency Report. As such, Rogers proposes that rather than setting a period that limits when a report can be released there should be a requirement that any organization issuing a Transparency Report must do so within six months of the end of the reporting period. This

will ensure that the figures reported are relevant and accurate when a Transparency Report is released.

16. Specific comments the metrics proposed by the OPC and Industry Canada are attached as Appendix A and B, respectively.

Conclusion

17. Rogers applauds both the OPC and Industry Canada for initiating discussions with industry to establish a set of guidelines for transparency reporting. A consistent set of guidelines will benefit both service providers and consumers alike.
18. For Rogers it is important for our customers to know that we only provide their information when required by law or in emergencies, after we have carefully reviewed the request. It is for this reason that we have taken a leadership role in issuing Transparency Reports. These reports need to be simple for our customers to understand and issued in a timely manner. We value opportunities to improve our reports, and look forward to working with both the OPC and Industry Canada as reporting guidelines are finalized.

Regards,



Deborah Evans
Associate Chief Privacy Officer &
Director, Consumer Policy

Attachs.

Attachment A: Rogers Comments on the OPC Proposed Transparency Guidelines

OPC Proposal	Rogers' Comments
Total requests received	Rogers has not objection to reporting the total requests received.
Number of individual accounts covered	While Rogers tracks individual accounts associated with disclosure requests, we do not do so for tower dump requests. It would be virtually impossible to track details of the individual accounts covered by a tower dump request.
Number of requests rejected	Rogers has not objection to reporting the total requests for information that were rejected.
Total responses provided (requests accepted)	Rogers does not currently track the total number of responses provided, but would be able to track to this level for future reports.
Preservation demands / orders <i>(Breakdown (% or #) of requests accepted)</i>	While Rogers tracks the number of preservation demands or orders, we do not breakdown the percentage or number of requests accepted. To report at this specific level would create an additional costly administrative burden as it would require additional resources for reporting and analysis.
Court orders / warrants (production) <i>(Breakdown (% or #) of requests accepted)</i>	While Rogers tracks the number of court orders and warrants received, we do not breakdown the percentage or number of requests accepted. To report at this specific level would create an additional costly administrative burden as it would require additional resources for reporting and analysis.
Exigent circumstances requests <i>(Breakdown (% or #) of requests accepted)</i> <i>(Breakdown (% or #) of requests accepted)</i>	While Rogers tracks the number of requests received under exigent circumstances, we do not breakdown the percentage or number of requests accepted. To report at this specific level would create an additional costly administrative burden as it would require additional resources for reporting and analysis.
Legal requirement letters (compelled under federal / provincial law) <i>(Breakdown (% or #) of requests accepted)</i>	While Rogers tracks the number of requests received under federal or provincial law, we do not breakdown the percentage or number of requests accepted. To report at this specific level would create an additional costly administrative burden as it would require additional resources for reporting and analysis.
Customer name and address checks (CNA) <i>(Breakdown (% or #) of requests accepted)</i>	While Rogers tracks the number of request for a customer name and address check, we do not breakdown the percentage or number of requests accepted. To report at this specific level would create an additional costly administrative burden as it would require additional resources for reporting and analysis.

Attachment A: Rogers Comments on the OPC Proposed Transparency Guidelines

OPC Proposal	Rogers' Comments
Content (real-time) (<i>Breakdown (% or #) of disclosures provided</i>)	
Content (historical) (<i>Breakdown (% or #) of disclosures provided</i>)	
Tracking data (location) (<i>Breakdown (% or #) of disclosures provided</i>)	While Rogers discloses tracking data, we do not breakdown the percentage or number of disclosures provided. To report at this specific level would create an additional costly administrative burden as it would require additional resources for reporting and analysis.
Transmission data (metadata) (<i>Breakdown (% or #) of disclosures provided</i>)	Rogers does not currently track transmission data, but it could be done for future reports. However, to breakdown the data to a percentage or number of disclosures provided would require additional costly resources for reporting and analysis.
Customer name and address checks (CNA) (<i>Breakdown (% or #) of disclosures provided</i>)	While Rogers tracks the number of name and address checks made, we do not breakdown the percentage or number of disclosure provided. To report at this specific level would create an additional administrative burden as it would require additional costly resources for reporting and analysis.
Number of international requests	Rogers occasionally receives requests from foreign agencies, which are directed to the MLAT process. These are currently tracked as a refusal.
Number of notices provided to users (<i>ex post facto</i>)	Rogers has not objection to reporting the total number of notices of disclosure to our customers.
Link to internal law enforcement handbook or retention policies (<i>useful but not mandatory</i>)	Rogers currently provides links to its privacy policy, which includes our retention policy.
Glossary of legal terms and technical definitions	Rogers currently provides a brief summary in its transparency report. Providing a more detailed glossary of legal terms and technical definitions would not be onerous.

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Attachment B: Rogers Comments on the Industry Canada Proposed Transparency Guidelines

Industry Canada Proposal	Rogers Comments
1. Basic identifying information (voluntary disclosure upon request by a government agency for information in circumstances where there is no reasonable expectation of privacy)	Rogers does not voluntarily disclose such information to a government agency, and therefore, would not report any numbers in this category.
2. Emergency requests for any type of data	Rogers currently tracks information disclosed under exigent circumstances. It would not be problematic to report this information.
3. Foreign agency requests (voluntary disclosure)	Rogers does not voluntarily disclose information to foreign agencies, and therefore, would not report any numbers in this category.
4. Requests made under federal or provincial statute	Rogers tracks any disclosures made to federal or provincial agencies when a request is made under relevant legislation. It would not be problematic to report this information.
Categories 5-10 may be placed under a general heading of 'Court orders and warrants'. It should be noted that the public nature of the court process and records it creates have built in elements of disclosure	
5. Basic identifying information (court ordered)	Rogers tracks any disclosures of basic identifying information requested by a court order. It would not be problematic to report this information.
6. Foreign agency requests (court ordered)	Rogers tracks any information disclosed to a foreign agency requested by a Canadian court order. It would not be problematic to report this information.
7. Tracking data (obtained via tracking warrant; governed by s.492.1 of the <i>Criminal Code</i> and other relevant statutes)	Rogers discloses tracking requested by a court order. It would not be problematic to report this information.
8. Transmission data (obtained via transmission data recorder warrant; governed by s.492.2 of the <i>Criminal Code</i> and other relevant statutes)	Rogers does not currently separate requests from any other request. It would be problematic to report this information.

Attachment B: Rogers Comments on the Industry Canada Proposed Transparency Guidelines

Industry Canada Proposal	Rogers Comments
9. Stored communications content and other stored data (obtained via general warrants and production orders; governed by s.487.01, 487.012, 492.2 of the <i>Criminal Code</i> and other relevant statutes)	
10. Real time interception (obtained via wiretap warrant; governed by Part VI of the <i>Criminal Code</i> and other relevant statutes)	Rogers tracks and reports such a disclosure under the general category of disclosure with a warrant or court order, but we do not track as a separate category. It would be problematic for us to track and report this information separately.
11. Total requests	Rogers could report on the total number or requests received.
12. Preservation demands and orders (governed by s.487.012 and s.487.013 of the <i>Criminal Code</i>)	Rogers tracks the number of preservation demands and orders received and complies with these requests as per relevant legislation or a court order. It would not be problematic to report this information.
13. Disclosures made on the initiative of the organization to a government agency	It is still unclear to Rogers what this reporting metric is intended to cover. Based on the April 1 meeting, it seems this is intended to capture a scenario where a reporting entity believed a law had been broken and voluntarily disclosed information about that belief and the customer to a government agency – for example a data breach that we would report it to the OPC. We have no comments at this time, but would be happy to provide further details if clarification is provided.

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Attachment B: Rogers Comments on the Industry Canada Proposed Transparency Guidelines

Industry Canada Proposal	Rogers Comments
<p>Limitation A: Any figures between 0 and 100 should be represented in a band of '0-100'. Any figure over 100 may be represented by its actual number. This is to protect the operational activities and capabilities of Canadian government and law enforcement agencies.</p>	<p>Rogers does not support this particular limitation as it is currently worded. A threshold would be reasonable if the total number of customers of the reporting company is small, however, for larger organizations such as Rogers we do not believe such a reporting range makes practical sense. This should be optional for the company depending on its particular circumstances, such as size of its customer base.</p>
<p>Limitation B: Figures should be aggregated to reflect Canada-wide statistics, and should not differentiate between law enforcement and national security users (i.e. there should be no breakdown by geography or specific agency). Moreover, these figures should also be aggregated such that service type and its associated network technology are not distinguishable (i.e. cellular voice services should not be subdivided and reported according to 2G, 3G or 4G/LTE network type, etc.). This is to protect the operational activities and capabilities of Canadian government and law enforcement agencies.</p>	<p>Rogers currently aggregates our statistics on a Canada-wide basis, and supports such a limitation.</p>
<p>Limitation C: There should be a six month delay in reporting timeframe, e.g. if a report covers the period January 1 to December 31, 2014, it should not be released before July 1, 2015. This is to ensure that most active investigations have no possibility of being compromised.</p>	<p>Rogers disagrees that there should be a limit placed on how soon after a reporting period a Transparency Report can be released.</p>

Attachment B: Rogers Comments on the Industry Canada Proposed Transparency Guidelines

Industry Canada Proposal	Rogers Comments
<p><u>Additional Information</u></p> <p>Providers may choose to include the following additional information in their reports:</p> <ol style="list-style-type: none">1. The number of requests fulfilled, rejected or contested for each of the aforementioned data categories. The aggregate band approach ('0-100', described in 'A' above) applies.2. The number of persons or accounts whose information was provided, for each of the aforementioned data categories. The aggregate band approach ('0-100', described in 'A' above) applies.3. Any relevant explanatory text that the provider wishes to provide, e.g. the circumstances under which requests are made, the powers under which they are made, explanation of terms, etc.	