



PERSONAL DATA
PROTECTION COMMISSION
S I N G A P O R E

**CLOSING NOTE FOR PUBLIC CONSULTATION ON PROPOSED ADVISORY
GUIDELINES FOR THE REAL ESTATE AGENCY SECTOR**

16 MAY 2014

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Part I

1 Background and Introduction

- 1.1 The Commission launched a public consultation on 23 January 2014 on the Proposed Advisory Guidelines on the application of the Personal Data Protection Act 2012 (“**PDPA**”) to scenarios faced in the real estate agency sector (“**real estate agency guidelines**”).
- 1.2 The real estate agency guidelines aim to complement more general guidelines issued by the Commission by addressing issues and scenarios specific to the real estate agency sector.
- 1.3 The consultation closed on 13 February 2014 with nine responses from consumers and organisations representing various sectors, including the real estate agency, and legal and academic sectors. Please refer to the Commission’s website for the full list of respondents and their submissions¹. The Commission thanks all respondents for their comments and participation.
- 1.4 Most of the responses received focused on asking the Commission to elaborate on or adjust the existing illustrations in the real estate agency guidelines, and on raising new scenarios for the Commission to illustrate the applicability of the PDPA.
- 1.5 The Commission has carefully considered all the comments and has endeavoured to address them as fully as possible in the finalised guidelines. Organisations will notice new and revised examples and further elaboration on areas where respondents have made comments.
- 1.6 This closing note for the real estate agency guidelines (“**closing note**”) seeks to:
 - a) summarise the key issues in this consultation, and
 - b) address common issues or queries which were raised by several respondents.
- 1.7 This closing note should be read in conjunction with the finalised real estate agency guidelines.

¹ <http://www.pdpc.gov.sg/personal-data-protection-act/public-consultations/responses-received-on-13-february-2014>

Part II: Overview of Issues – Real Estate Agency Guidelines

2 Treatment for en-bloc sale marketing

Feedback received

- 2.1 One respondent sought clarifications on the treatment under the PDPA for an estate agent marketing a possible en-bloc sale of a property among residents of the property. The respondent shared that typically, the estate agent would first obtain a resident's contact information through channels such as online title searches, the Management Corporation ("MC"), or neighbours. Next, the estate agent would proceed to mail initial letters to inform residents of a possible en-bloc sale, and to conduct follow-up calls with residents.

PDPA may apply to en-bloc sale marketing

- 2.2 It is not immediately evident whether the PDPA applies to the marketing of an en-bloc sale. For example the personal data of residents may not have been collected, used or disclosed in the event when the estate agent merely distributes standard flyers to the mailboxes of the residents, addressed generically to "The Resident". The Commission will consider the specific facts of the case in determining whether the Data Protection Provisions and/or Do Not Call Provisions apply. Nonetheless, to provide some clarity in the situation where the Data Protection Provisions apply, the Commission has included an example in the finalised real estate agency guidelines to address the issue of obtaining consent for marketing a possible en-bloc sale to a resident.

3 Application of the Do Not Call Provisions for specified messages sent to salespersons

Feedback received

- 3.1 One respondent sought clarification on whether SMS messages sent from an estate agent to a salesperson would be subject to the Do Not Call Provisions. The respondent cited examples such as messages relating to the launch of new projects and commission structure, and proposed that such messages be considered “Business to Business” (“**B2B**”) messages.

Messages for salespersons’ business purposes considered B2B messages

- 3.2 The exclusion under the Eighth Schedule to the PDPA relating to B2B messages provides that a specified message shall not include “*any message sent to an organisation other than an individual acting in a personal or domestic capacity, for any purpose of the receiving organisation*”. While a salesperson may be a separate entity from an estate agent, messages sent from an estate agent to a salesperson (or, for that matter, one salesperson to another) for the business purposes of the latter will generally not be subject to the Do Not Call Provisions. It should also be noted that, more generally, messages that do not contain any of the purposes under section 37 of the PDPA² would not be specified messages.
- 3.3 The Commission has illustrated this treatment by including an additional scenario in the finalised real estate agency guidelines.

² Examples of messages which fall within section 37 of the PDPA would include those which purposes are to offer to supply, advertise, or promote goods or services, land or an interest in land, or a business or investment opportunity, or a supplier of such goods, services, land or opportunity.

4 Compliance with sectoral regulatory requirements

Feedback received

- 4.1 One respondent requested more clarity on compliance with other regulatory requirements, such as the Professional Service Manual (“**PSM**”) issued by the Council for Estate Agencies (“**CEA**”), and Anti-Money Laundering (“**AML**”) laws. The respondent added that the PSM requires estate agencies or salespersons to collect, use, disclose, and/or retain personal data of a client (such as full name, NRIC, passport details, age etc) for verification purposes such as confirmation of the client’s identity, and (in certain cases) due diligence checks on the client’s legal residency status. The respondent also explained that estate agents/salespersons’ clients selling overseas properties would require them to collect the personal data of buyers (such as copies of their NRICs or passports) in order to comply with AML laws from the client’s country.

The PDPA and other written laws

- 4.2 The Commission understands from the CEA that under Paragraphs 4(1) and 4(2)(a) of the Code of Ethics and Professional Client Care listed in the First Schedule of the Estate Agents (Estate Agency Work) Regulations 2010, estate agents/salespersons must comply with the PSM, among other obligations³. Failure to comply with the practice circulars and guidelines of the CEA may result in disciplinary action under section 52 of the Estate Agents Act.
- 4.3 Section 4(6)(a) of the PDPA provides that the Data Protection Provisions do not affect any existing authority, rights or obligations under the law. Section 13(b) of the PDPA also provides that an organisation may collect, use or disclose personal data of an individual without consent if it is required or authorised under other written law. Hence, where there are requirements imposed by or under other Singapore laws, such as the requirements under the PSM, organisations should continue to comply with those obligations.
- 4.4 In addition, estate agents/salespersons will have to determine how best to comply with the PDPA, as well as applicable foreign laws, where relevant.

³ This may include requirements such as complying with Immigration Act (Cap. 133) requirements to conduct due diligence checks before salespersons recommend a foreign tenant to a landlord or facilitate a lease to a foreigner.

5 Other issues

Re-identification risks of anonymised data

- 5.1 One respondent cautioned that estate agents may face difficulties in ascertaining re-identification risks of apparently anonymised data disclosed to a salesperson, and requested further guidance on the types of publicly available data which estate agents should pay more attention to.
- 5.2 The Commission acknowledges the potential challenges in keeping data anonymised and managing re-identification risks, which may be due to factors which may be beyond the control of the estate agent. The Commission advocates good management of re-identification risks to reduce the likelihood of anonymised data becoming personal data, such as employing robust anonymisation techniques, imposing additional enforceable restrictions on the use and subsequent disclosure of the data etc. In this regard, the Commission notes that certain information that is readily available to the public, for example information in telephone directories or society membership listings, may facilitate the re-identification of an individual. The Commission would also encourage organisations to refer to the Advisory Guidelines on the PDPA for Selected Topics in relation to anonymisation and re-identification risks.

Whether salespersons are data intermediaries of estate agents

- 5.3 Several respondents commented on the nature of the relationship between estate agents and salespersons. One respondent argued that salespersons – in the course of carrying on their business – do not deal with data in the same way as a data intermediary (“DI”) to whom the organisation has outsourced its data processing functions. A second respondent explained that most salespersons working for an estate agent are considered independent contractors because these salespersons may sometimes manage personal data of clients independently and not disclose to the estate agent. In such a case, the estate agent does not have oversight and control over the collection, use or disclosure of the client’s personal data. A third respondent sought more clarity on the obligations of salespersons and estate agents in relation to the handling of a client’s personal data.
- 5.4 The Commission notes that whether a salesperson may be considered a DI depends largely on the arrangements between the salesperson and the estate agent. The Commission has added examples in the finalised real estate agency guidelines to illustrate when salespersons may or may not be DIs processing personal data on behalf of and for the purposes of an estate agent pursuant to a contract evidenced or made in writing.

Obtaining written or explicit consent to collect, use or disclose personal data in property transactions

- 5.5 One respondent enquired if written or explicit consent for estate agents/salespersons to collect, use or disclose personal data is required under the Data Protection Provisions for situations related to property transactions (for example, disclosure of a potential tenant's personal data to the person offering the property for rent), and noted that the treatment may be complicated by elements such as co-broking.
- 5.6 The Commission first notes that whether data held by a salesperson or an estate agent would be personal data depends on the facts of the case. It is possible that some data (e.g. age, nationality) collected, used or disclosed in the context of a property transaction may not, on their own, identify an individual. Where such data is personal data, the Commission has already clarified that while the Data Protection Provisions require consent to be obtained from an individual for the purposes for which his personal data is collected, used or disclosed, consent need not be obtained only in written form. The Commission has reiterated this clarification in the finalised real estate agency guidelines, and added an example to illustrate how the Data Protection Provisions may apply in a co-broking situation.

Valid consent for personal data of multiple individuals

- 5.7 One respondent sought clarifications on valid consent for the collection, use or disclosure of personal data relating to multiple individuals purchasing one property. Specifically, the respondent cited the example where one of the individuals gives consent for the salesperson to collect, use or disclose the personal data of all the other individuals involved in the transaction.
- 5.8 The Commission notes that generally, the salesperson will need to obtain consent from the respective individuals when collecting, using or disclosing their personal data. Depending on the specific facts of the case, possible exceptions may apply, such as when the individuals are acting for personal or domestic purposes (e.g. if they are a married couple purchasing a family home), or when the data is business contact information ("**BCI**"). The Commission has added an example in the final advisory guidelines to illustrate these scenarios.

Obtaining consent for each item of personal data collected

- 5.9 One respondent pointed to the potential challenges salespersons may experience when determining the set of personal data which may be communicated to potential buyers in the context of a property transaction such as when the salesperson informs the homeowner of the potential buyer's surname, age and nationality.
- 5.10 The Commission has clarified that consent should be obtained in relation to the purpose(s) for collection, use or disclosure of personal data. Generally, where organisations have already obtained consent for the collection, use or disclosure of personal data for a particular purpose, the Commission does not expect organisations to obtain separate consent in respect of each specific item of such personal data, or each instance that such personal data is collected, used or disclosed for that purpose.

Application of PDPA to personal data of salespersons or employees

- 5.11 One respondent requested clarification on the application of the PDPA in relation to personal data of working members of an organisation (e.g. salespersons or staff) used for work-related purposes.
- 5.12 The Commission clarifies that organisations are generally required to comply with the PDPA in relation to handling of personal data of such individuals. Exceptions to certain obligations may apply, such as when the personal data is collected by the individual's employer and is reasonable for the purpose of managing or terminating an employment relationship between the organisation and the individual, or when the personal data is collected/used/disclosed for evaluative purposes⁴. The Commission also notes that certain data may be considered to be BCI.

⁴ "Evaluative purpose" is defined under the PDPA to mean –

- (a) for the purpose of determining the suitability, eligibility or qualifications of the individual to whom the data relates – (i) for employment or for appointment to office; (ii) for promotion in employment or office or for continuance in employment or office; (iii) for removal from employment or office; (iv) for admission to an education institution; (v) for the awarding of contracts, awards, bursaries, scholarships, honours or other similar benefits; (vi) for selection for an athletic or artistic purposes; or (vii) for grant of financial or social assistance, or the delivery of appropriate health services, under any scheme administered by a public agency;
- (b) for the purpose of determining whether any contract, award, bursary, scholarship, honour or other similar benefit should be continued, modified or cancelled;
- (c) for the purpose of deciding whether to insure any individual or property or to continue or renew the insurance of any individual or property; or
- (d) for such other similar purposes as may be prescribed by the Minister;

Determining when personal data is BCI

- 5.13 A respondent noted that it may be difficult for estate agents to determine if personal data of salespersons listed on websites are considered BCI.
- 5.14 The Commission notes the contextual nature of BCI and would encourage organisations to refer to the Advisory Guidelines on Key Concepts in the PDPA for further guidance on when personal data may be BCI.

Use of different contact details relating to the same individual but collected on different occasions

- 5.15 One respondent sought clarification on whether estate agents/salespersons may contact an individual using contact details collected at other events.
- 5.16 Generally, where the contact details are personal data of the individual, consent would be required for such use, unless exceptions apply (for example, if the information was BCI). Factors such as the scope of consent given by the individual to the estate agent/salesperson would have to be considered. While the Commission will have to assess each case based on specific facts, the Commission has added an example to the finalised real estate agency guidelines to illustrate a possible treatment under this scenario.

Responding to requests for information about goods and services

- 5.17 One respondent requested more examples explaining how salespersons may respond to customer requests for information, in compliance with the Do Not Call Provisions.
- 5.18 The Commission had previously clarified in the Advisory Guidelines on the Do Not Call Provisions that a person who sends a message to a Singapore telephone number for the sole purpose of responding to a request from an individual for information about a good or service would not be considered to be sending a specified message. The Commission had also noted that as best practice, when a person receives such a request, from a third party (such as in referral situations), the person should exercise appropriate due diligence to confirm that the individual had in fact made such a request for information. Organisations are thus advised to refer to the Advisory Guidelines on the Do Not Call Provisions for more details.

Obtaining clear and unambiguous consent under the Do Not Call Provisions

- 5.19 A respondent queried the necessity for an individual to tick the check box in a showflat guestbook in order to be considered as having provided clear and unambiguous consent in evidential form, and enquired on possible alternatives.
- 5.20 The Commission had previously noted that there are various ways in which clear and unambiguous consent in evidential form may be obtained. The ticking of a check box may potentially be considered to be the provision of clear and unambiguous consent in evidential form under some circumstances⁵. The Commission would advise organisations to refer to the Advisory Guidelines on Key Concepts in the PDPA as well as the Advisory Guidelines on the Do Not Call Provisions for more examples of how clear and unambiguous consent in evidential form may be obtained.

Determination whether there is an of ongoing relationship

- 5.21 Several respondents sought clarifications on the term “ongoing relationship” in the Personal Data Protection (Exemption from section 43) Order 2013 (S 817/2013) (“**Exemption Order**”).
- 5.22 One respondent asked if regular email/SMS updates to ex-clients that included unsubscribe options would suffice to constitute an “ongoing relationship” under the Exemption Order, while another respondent requested more clarity on “ongoing relationships” beyond one-off situations.
- 5.23 Under the Exemption Order, an ongoing relationship is defined as a relationship, which is on an ongoing basis, between a sender and a subscriber or user of a Singapore telephone number, arising from the carrying on or conduct of a business or activity (commercial or otherwise) by the sender. The Commission had previously set out guidance (in both the Advisory Guidelines on the Do Not Call Provisions and the proposed real estate agency guidelines) on considerations in determining the existence of an ongoing relationship. In particular, the Commission had noted that unilateral action by one party would not suffice to constitute an ongoing relationship. For example, regular unsolicited email updates to clients by an estate agent or salesperson would, in themselves, generally not be sufficient to constitute an ongoing relationship. The Commission would recommend that organisations peruse the Advisory Guidelines on the Do Not Call Provisions and the finalised real estate agency guidelines for more information on when an ongoing relationship may exist.

⁵ For example, when the check box is next to a clause seeking consent for the sending of specified messages to the individual via SMS.

Contacting individuals who advertise their property in newspapers

- 5.24 The Commission has also separately received feedback from members of the public requesting clarifications on whether salespersons who contact individuals who place advertisements in the newspapers putting up their property for rental/sale will be subject to the Do Not Call Provisions.
- 5.25 The Commission notes that salespersons may send a variety of messages to the Singapore telephone numbers of individuals advertising their property. The Commission has clarified in the finalised real estate agency guidelines that a salesperson sending a message offering his services to an individual by sending a message (whether by way of voice call, SMS or fax) to his Singapore telephone number will generally be considered to be sending a specified message to the individual. The Commission will consider whether other types of messages sent by a salesperson to the individual who has advertised his property are specified messages on a case-by-case basis.

Part III: Conclusion

6 Conclusion

- 6.1 The Commission will continually assess the need to issue guidelines in future on other topics to facilitate understanding and compliance of the PDPA obligations.
- 6.2 There are other resources available to organisations apart from guidelines issued by the Commission. Organisations should visit www.pdpc.gov.sg for more information on the following:
- How to contact the Commission for general queries
 - Answers to Frequently Asked Questions
 - Briefing sessions and workshops conducted by the Commission to help organisations gain further insights into the requirements of the PDPA
 - The Commission's informal guidance process
- 6.3 This closing note should be read in conjunction with the finalised guidelines. Once again, the Commission thanks all respondents for their comments and participation in this public consultation.