

PRACTICAL GUIDANCE TO QUERIES BY MANAGEMENT CORPORATION STRATA TITLE

1. A Management Corporation Strata Title (“the MCST”) has sought guidance from the Personal Data Protection Commission (the “Commission”) on disclosing the contact details of subsidiary proprietors to the marketing agent of a Collective Sales Committee (“CSC”) of a development for the purpose of contacting these subsidiary proprietors on enbloc sale matters. The guidance sought relates to the telephone numbers (i.e., mobile, residential and office telephone numbers), addresses and/or email addresses of subsidiary proprietors of the development who have been deemed uncontactable by the CSC and its marketing agent.
2. For the avoidance of doubt, the Commission seeks to provide guidance under the Personal Data Protection Act 2012 (“PDPA”) only and the Commission’s guidance is not to be construed as providing any guidance in relation to the Building Maintenance and Strata Management Act (“BMSMA”) or any other laws. Further, the guidance relating to the PDPA as set out in this document has been scoped to address the specific situation based on the information provided by the MCST and its representative.

Consent Obligation

3. Under the PDPA, organisations may not collect, use or disclose an individual’s personal data unless the individual gives, or is deemed to have given, his consent for the collection, use or disclosure of his personal data.

Exceptions to Consent Obligation

4. The requirement to obtain consent does not apply where the collection, use or disclosure of an individual’s personal data without consent is required or authorised under the PDPA or any other written law.
5. Under the PDPA, the Second, Third or Fourth Schedules to the PDPA set out various exceptions to the Consent Obligation, i.e., circumstances where consent need not be obtained for collection, use or disclosure respectively.
6. Specifically, there are exceptions¹ to the requirement to obtain consent where the personal data is publicly available. The term “publicly available” is defined in section 2(1) of the PDPA and refers to personal data (about an individual) that is generally available to the public, including personal data which can be observed by reasonably expected means at a location or an event at which the individual

¹ Refer to paragraphs 1(c), 1(c) and 1(d) of the Second, Third and Fourth Schedules to the PDPA respectively.

appears and that is open to the public. In its Advisory Guidelines on Key Concepts in the PDPA, the Commission has stated that personal data is generally available to the public if any member of the public could obtain or access the data with few or no restrictions².

7. In its Grounds of Decision, *Re Exceltec Property Management Pte Ltd and others* [2017] SGPDPC 8, the Commission had taken the view that the names, unit numbers and voting shares of residents are publicly available information under the PDPA for the following reasons:

- a) **the information can be found in the strata roll, which the Commission considers to be generally available to the public.** All management corporations are required to prepare and maintain a strata roll which contains, among other things, the name and addresses (including unit number) and share value of the lots. A subsidiary proprietor or mortgagee, prospective purchaser or mortgagee, or person authorised in writing by the subsidiary proprietor or mortgagee may make an application to the management corporation for the property's strata roll³. Since access to these strata rolls extends to "prospective" purchasers or mortgagees as well, in practical terms, this allows almost any member of public who claims to be a "prospective" purchaser to gain access to the information in the strata roll;
- b) **there are few restrictions under the BMSMA for a person to gain access to the strata roll.** In order for a person to inspect the strata roll, the person only needs to make an application to the MCST and pay the prescribed fee. There are generally no other pre-requisites or qualifications needed in order to obtain the strata roll. Even though section 47(1) of the BMSMA states that the strata roll shall only be made available to a defined class of applicants, the breadth of the defined class of applicants renders it difficult to enforce checks to ensure that the applicant for the information falls within the class. The practical reality is that there is a very low barrier to cross for a person to access the strata roll, besides simply just making the application and paying the prescribed fee; and
- c) **some of this information, such as the proprietor's name and address, may already be found on the Singapore Land Authority (SLA) Registry, which the public would generally have access to.**

8. In assessing whether the telephone numbers, addresses and/or email addresses of subsidiary proprietors that are deemed uncontactable are considered publicly

² Refer to paragraph 12.58 of the Advisory Guidelines on Key Concepts in the PDPA.

³ Section 47(1)(b) of the BMSMA.

available and may be disclosed without consent in the circumstances, the MCST should take into consideration the following:

- a) **Whether the information can be found in registries or records that the public would have access to (e.g., Land Titles Registry).** The Commission generally takes the view that such information is considered publicly available under the PDPA; and
 - b) **Whether the information can be found in registries or records that is accessible by broadly defined classes of persons and there are few or no restrictions preventing persons from accessing the information, such as the strata roll.** If there are few or no restrictions to prevent a member of the public from accessing the information, the information could be considered publicly available under the PDPA.
9. To be clear, in both the above categories, the imposition of a fee in order to access the information in itself does not preclude the information from being generally available to the public.
10. The Commission notes that addresses of subsidiary proprietors are required to be set out in the strata roll and SLA Registry, and there are few restrictions preventing a member of the public from accessing this information. If the MCST discloses such personal data that is already found in the strata roll or SLA Registry, then the MCST is not required to obtain consent to the disclosure under the PDPA.
11. Where the exception for publicly available information does not apply to some or all of the information (e.g. if the mobile telephone numbers are not found in public registries or publicly available records) and other exceptions do not apply, the MCST could consider:
- a) **Obtaining consent from the relevant subsidiary proprietors** to disclose the information to the CSC and its marketing agent. The MCST will have to notify the individual that it wishes to disclose the individual's personal data to the CSC and its marketing agent for the purpose of contacting them on enbloc sale matters and obtain the individual's consent. If the individual consents, the MCST may provide the personal data to the CSC and its marketing agent only for the purpose of contacting the individual for enbloc sale matters; or
 - b) **Whether any other written law requires or authorises the provision of the information.** The PDPA does not affect any right or obligation under other laws, and other written laws will prevail to the extent of any inconsistency. For instance, if the MCST is required to provide any information to an applicant under the BMSMA or other written law, the

MCST must do so and the PDPA does not affect such obligation under other laws.⁴ In particular, the MCST may wish to consider whether or not the information is comprised in the records or documents that can be provided to the CSC. The MCST may wish to seek its own legal advice, if it requires advice on whether its disclosure of contact numbers, addresses and/or email addresses of subsidiary proprietors to the CSC is authorised or required under the BMSMA⁵.

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⁴ Conversely, if the MCST is prohibited from disclosing any information under any other written law, the MCST may not provide such information even if there is an applicable exception to consent under the Fourth Schedule to the PDPA.

⁵ It is noted, for example, that Section 47(1A) of the BMSMA specially provides that a management corporation shall, upon application made to it in writing by a CSC, furnish a copy of extracts from the strata roll.