



Obligations under the Privacy Act – An Update - September 2008

Property owners, real estate agents, property managers and developers may collect, use or disclose personal information about tenants, customers, clients and others in the course of their businesses. When doing so they should be wary of their obligations under the Privacy Act ("**Act**").

Under the Act organisations must not do an act, or engage in a practice, that breaches the National Privacy Principles ("**NPPs**"). Generally, the NPPs regulate how organisations may collect, use, store and disclose "personal information".

"Personal information" is information or an opinion about an individual whose identity is apparent, or can be reasonably ascertained, from that information or opinion. The following are examples of circumstances where personal information may be collected, used or disclosed by agents, owners, managers or developers:

- Direct marketing activities (i.e. surveys, mail-outs, forms, telemarketing).
- Information relating to security and data access if it relates to the personal activities of tenants, their staff or customers.
- Bank references or information concerning individuals who guarantee the obligations of corporate tenants.
- Buying or selling tenant lists containing personal information.
- Contracts for sale of land containing personal information.

The Privacy Commissioner publishes case summaries which are considered to be of interest to the general public. The following is a summary of some cases which have recently been decided by the Privacy Commissioner which may be of interest to agents, owners, managers or developers when considering how they comply with the NPPs and their obligations under the Act:

P v Tenancy Database [2007] PrivCmrA 18

- The complainant rented a property, which was later repossessed by order of the Residential Tenancies Tribunal.
- Almost five years later, a real estate agency (that had begun managing the property after the orders were made) listed the complainant's name on a tenancy database, in relation to the earlier Tribunal orders. The complainant told the tenancy database that they never had any dealings with the real estate agency and also informed that agency of the length of time that had elapsed since the orders had been made.
- The Commissioner found that the listing by the real estate agency onto the database created the false impression of a relationship between the complainant and the agency, and so the personal information could not be considered accurate. The Commissioner also found that the length of time which had passed rendered the information out of date as the information was no longer current. As a result, the tenancy database removed the complainant from their records.

E v Insurance Company [2008] PrivCmrA 5

- The complainant was in a car accident and had submitted necessary documentation to their insurance company which included personal contact details. The insurance company disclosed the complainant's contact details to the third party involved in the accident and the third party subsequently contacted the complainant wanting to discuss the amount of money the third party would be required to pay.
- The insurance company had improperly disclosed personal information and provided the complainant with a written apology.

K v Health Service Provider [2008] PrivCmrA 11

- A health service provider was interviewed by a newspaper about her work in a remote community and as part of the interview, the health service provider discussed aspects of the complainant's health care.
- Although the health service provider did not specifically name the complainant, the complainant claimed that given the nature of information discussed and the specific and remote location of the community, the complainant's identity was apparent to other residents of that community
- The parties agreed to an undisclosed amount of financial compensation in settlement of this matter.

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