

Case 202400056

**Enforcement Order**

**The Proprietors, Strata Plan No. 273**

25 October 2024

**SUMMARY**

An owner of units (the Complainant) within the Pinnacle Condominiums (the Pinnacle) submitted a complaint to the Ombudsman under the Data Protection Act (2021 Revision) (DPA)<sup>1</sup> against the Proprietors, Strata Plan No. 273 (the Strata). The complainant claimed that the Strata was processing personal data through its on-site CCTV system in an unlawful manner. While the investigation into that complaint was ongoing, the Executive Committee of the Strata issued an update to all Pinnacle unit owners that allowed for the identification of the Complainant and contained details of the complaint that had been made. The Complainant further complained that this update was an unlawful disclosure of the Complainant's personal data.

The Ombudsman investigated the matter and found that the update did disclose personal data relating to the Complainant. The disclosure was not made fairly and there was no legal basis for the Complainant's personal data to be shared in this manner. The disclosure also breached the seventh data protection principle as it led to unauthorized and unlawful processing of personal data, due to a lack of appropriate controls.

The Ombudsman ordered the Strata to make no further disclosures of the Complainant's personal data to all unit owners without doing so fairly and with an appropriate legal basis. The Strata is also required to put in place appropriate technical and organizational measures to ensure that it handles personal data in a secure and lawful manner.

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<sup>1</sup> In this decision, all references to sections are to sections of the Data Protection Act (2021 Revision), and all references to regulations are to the Data Protection Regulations, 2018, unless otherwise specified.

**A. BACKGROUND**

- [1] On 24 June 2024, we notified the Strata that we had received a complaint against them under section 43. The Complainant was concerned about the Strata’s use of its CCTV system, particularly that it was operating without a proper legal basis and was collecting excessive personal data.
- [2] My office started an investigation of this matter, but while this was underway, on 31 July 2024, the Executive Committee of the Strata issued an update to ‘All Pinnacle Unit Owners’ (the update) that identified that a complaint had been made on behalf of the owner of a named unit, and contained details of the complaint that had been made, as well as their intentions to charge back their legal costs to the owner of that unit. The Complainant, through legal counsel, informed us of this on 13 August 2024 and claimed that this constituted an unlawful disclosure of the Complainant’s personal data, breaching the first and second data protection principles.
- [3] On 14 August 2024, we requested that the Executive Committee provide us with their observations as to how this disclosure of personal data was made in compliance with the DPA.
- [4] We received their response on 19 August 2024. It claimed that the update did not contain any personal data, as the owner of the named unit was not the Complainant as an individual, but a company owned by the Complainant. It also claimed that it had lawful authority to disclose the information to all unit owners, as they are entitled, as members of the body corporate, to a copy of the Ombudsman’s email dated 24 June 2024, given that the Strata is the respondent to the complaint. They also stated that we did not seek to place any restriction on the recipients of the email, and it was not marked as confidential.

**B. CONSIDERATION OF ISSUES**

- [5] Section 43 states:

*43. (1) A complaint may be made to the Ombudsman by or on behalf of any person about the processing of personal data that has not been or is not being carried out in compliance with the provisions of this Act or anything required to be done pursuant to this Act.*

...

*(3) On receiving a complaint referred to in subsection (1), or on the Ombudsman's own motion, the Ombudsman may conduct an investigation.*

...

[6] Section 2 defines "personal data" as follows:

*"personal data" means data relating to a living individual who can be identified and includes data such as —*

- (a) the living individual's location data, online identifier or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the living individual;*
- (b) an expression of opinion about the living individual; or*
- (c) any indication of the intentions of the data controller or any other person in respect of the living individual;*

[7] Section 45 states:

*45. (1) If the Ombudsman is satisfied that there are reasonable grounds for believing that a data controller has contravened, is contravening or is likely to contravene any provision of this Act, the Ombudsman may, with a view to effecting the data controller's compliance with the provision, by way of an order served on the data controller, require that data controller to —*

- (a) take specified steps within a specified time, or to refrain from taking specified steps after a specified time;*
- (b) refrain from processing any personal data, or any personal data of a specified description;*
- (c) refrain from processing data for a specified purpose or in a specified manner, after a specified time; or*
- (d) do anything which appears to the Ombudsman to be incidental or conducive to the carrying out of the Ombudsman's functions under this Act.*

[8] The first data protection principle in paragraph 1, part 1 of schedule 1 states:

***First principle***

*1. Personal data shall be processed fairly. In addition, personal data may be processed only if —*

- (a) in every case, at least one of the conditions set out in paragraphs 1 to 6 of Schedule 2 is met; and*

...

- [9] Furthermore, paragraph 2, part 2 of schedule 1 requires that certain information be provided to data subjects:

***First principle: specified information at relevant time***

*2. For the purposes of the first principle personal data shall not be treated as processed fairly unless the data subject has, as soon as reasonably practicable, been provided with, at a minimum —*

- (a) the identity of the data controller; and*
- (b) the purpose for which the data are to be processed.*

- [10] The second data protection principle in paragraph 2, part 1 of schedule 1 states:

***Second principle***

*Personal data shall be obtained only for one or more specified lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.*

- [11] The seventh data protection principle in paragraph 7, part 1 of schedule 1 states:

***Seventh principle***

*Appropriate technical and organizational measures shall be taken against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.*

**Personal data**

- [12] The Strata claims that it only identified the company that owns the named unit in the update, not the Complainant as an individual data subject. We do not accept this argument. The complaint was made by the Complainant as an individual, not by the company, and therefore the contents of the update do relate to a living individual. The Complainant attends owners meetings and occasionally occupies the property, so the Complainant is clearly identifiable to the other unit owners. As the update contains 'data relating to a living individual who can be identified', it contains the personal data of the Complainant.

**First data protection principle – fair processing**

- [13] The Strata is a data controller, as defined in section 2.
- [14] The first data protection principle requires that personal data be processed fairly. This means, amongst other things, that a data controller must have a legal basis for the processing, i.e. the processing must meet one of the conditions in schedule 2 (and an additional processing condition in schedule 3 if the data is sensitive personal data – which is not applicable in this case).
- [15] Also under the first data protection principle, upon collecting personal data, a data controller must inform data subjects in writing of (a) the identity of the data controller, and (b) the purpose of the data processing.

***Legal basis***

- [16] The Strata has not offered a legal basis for its disclosure of the personal data via the update. It has claimed that it had lawful authority to share the information with all unit owners given that the Strata is the respondent to the complaint. However, as stated in the By-Laws of the Strata, the Executive Committee is there to “exercise the powers and perform the duties” of the Strata. It is therefore not ‘necessary’ for the personal data to be shared with all unit owners, as the response to the complaint is being compiled by the Executive Committee in line with its duties. The Complainant had not given consent for the disclosure to take place.
- [17] **Therefore, there was no legal basis for the personal data to be shared via the update to all unit owners.**

***Fair processing***

- [18] When the basic details of the complaint and the identity of the Complainant were shared with the Strata it was for the purpose of them assisting with our investigation and responding to the complaint. It would not be within the reasonable expectations of the Complainant that personal data relating to them and details of their complaint would be shared with all unit owners at the Pinnacle. Nor did the Strata make the Complainant aware that this is what they would be doing with that personal data.
- [19] **Consequently, the Strata did not meet the statutory requirements for fairly processing personal data, since it did not make the Complainant aware that their personal data would be shared with all unit owners via the update.**

**Seventh data protection principle – data security**

- [20] The third data protection principle requires that data controllers have in place appropriate technical and organizational measures to prevent unlawful or unauthorized processing of personal data.
- [21] The Strata claims that it was able to share the update as we had not placed any restriction on the recipients of our original email to them, nor had we marked it as ‘confidential’. This misunderstands one of the basic principles of data protection, which is that personal data should only be accessible to those individuals within an organization who have a need to access it as part of their role. In this case, it is the Executive Committee that is responsible for responding to our investigation and the Strata has not given a compelling argument as to why personal data should have been shared more widely than that. This demonstrates a lack of organizational measures, as personal data is not being managed on a ‘need to know’ basis and there appears to be a general lack of understanding of the Strata’s duties under the DPA.
- [22] **Therefore, the processing by the Strata of the personal data via the update has led to unauthorized and unlawful processing of personal data, and this practice contravenes the seventh data protection principle.**

**C. FINDINGS AND DECISIONS**

- [23] Under section 45(1) of the Data Protection Act (2021 Revision), for the reasons explained above, I make the following findings and decisions:
- a) The Strata does not have a legal basis in paragraph 5, part 2 of schedule 1 of the DPA, for the disclosure of the Complainant’s personal data via the update.
  - b) The disclosure of personal data by the Strata did not meet the requirements of the first data protection principle in schedule 1 of the DPA, since the Complainant was not made aware, and nor would they have a reasonable expectation, that their personal data would be disclosed to all unit owners in this manner.
  - c) The update has led to unauthorized and unlawful processing of personal data, due to a lack of appropriate security controls and a lack of understanding of the data protection principles.

[24] Under section 45(1) of the DPA, for the reasons explained above, I require the Strata to take the following steps as soon as practicable, but in any event no later than 30 days after the date of this Order:

- a) The Strata is to make no further disclosures of the Complainant's personal data to all unit owners without doing so fairly and with an appropriate legal basis.
- b) The Strata is required to put in place appropriate technical and organizational measures to ensure that it handles personal data in relation to complaints in a secure and lawful manner.

[25] Under section 47, a person who receives an enforcement order under the DPA may, within 45 days of receipt and upon notice to the Ombudsman, seek a judicial review of the Order to the Grand Court.



**Sharon Roulstone**  
Ombudsman