

Case Study - Use of Confidential Information - The LIST

Relevant Facts

In April 2020 the Complainant received personalised correspondence addressed to him at his home address, in which was a pamphlet advertising property management services of a real estate agency business (the Real Estate Agency). The Complainant is the owner of a rental property.

The pamphlet was signed by an employee (the Employee) of the Real Estate Agency. The employee does not hold a valid property agents licence.

The Complainant's wife telephoned the Employee and enquired as to how the information identifying the Complainant as the owner of the rental property had been obtained. The Employee responded, saying she had "...accessed the LIST (Land Information System Tasmania) to get the information".

Section 83(2) of the *Property Agents and Land Transaction Act 2016* (the Act) states that when unsatisfactory professional conduct committed by a person employed by a real estate agent is '...committed with the consent...or was attributable to... default on the part of, the agent, manager...(then) the agent, manager... is also guilty of that conduct".

The complaint was made against the property agent authorised to manage (the Property Agent) the Real Estate Agency.

Ground of complaint

The ground of complaint was that the Property Agent engaged in unsatisfactory professional conduct by using, or allowing to be used, confidential information in an attempt to solicit clients.

Discussion

Upon receipt of the Complaint the Property Agent raised the matter with the Employee, who confirmed to him that when speaking to the Complainant's wife she had said we had old data bases and confirmed information on the LIST.

In his submissions to the Board the Property Agent stated, "As a young company we have been heavily focused on prospecting for business and, having employed several experienced consultants, have used several older databases to introduce ourselves...".

When asked by the Investigator, the Property Agent confirmed the nature of the Real Estate Agency's subscription to The LIST, noting that it allowed access to gain very particular information on land holdings and owners and that he was aware that information from The LIST cannot be used for marketing purposes.

The Property Agent submitted that the breach of the Complainant's privacy was not an intentional act, and though not excusable, occurred during the course of routine work with the Real Estate Agency's databases. However once he was made aware of what had transpired he promptly emailed his administrative staff with information on the Privacy Act and the obligations in collecting and using information and particularly in relation to marketing.

The Board noted the advice of the Investigator that when the Complaint was brought to the attention of the Property Agent (and the Employee) they made immediate, unqualified admissions regarding how the information was obtained and the subsequent improper use of information obtained from The LIST for marketing purposes and that the Property Agent had taken appropriate steps to ensure that such an incident did not occur again.

Finding by the Board

The Board considered that the evidence indicated that the conduct may amount to minor misconduct that could be dealt with by the Board under Section 100 of the Act. Accordingly, the Board wrote to the Property Agent for a written explanation of the conduct – that, in his capacity as the managing real estate agent, the Property Agent allowed to be used confidential information obtained from The LIST to contact the Complainant in an attempt to solicit business.

The Board was satisfied that the Complaint was substantiated on the basis that the Property Agent did not exercise a standard of competence and diligence that the public is entitled to expect from a reasonably competent property agent.

The Board found that the Property Agent's failure to have a system in place to prevent confidential information from being incorrectly used for marketing purposes amounted to unsatisfactory professional conduct, but of a minor nature and cautioned the Property Agent pursuant to Section 101(6)(a) of the Act.