Published on e-First 18 July 2024

11. CONFIDENTIAL INFORMATION AND DATA PROTECTION

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I. Confidential information

A. Tritech Water Technologies Pte Ltd v Duan Wei – *Proving misuse*

11.1 *Tritech Water Technologies Pte Ltd v Duan Wei*[1] was a case heard in the General Division of the High Court ("General Division") involving an ex-employer suing ex-employees for breach of confidence. This case offers a demonstration of how a plaintiff in an action for breach of confidence can rely on circumstantial evidence to prove that the defendant had misused confidential information.

11.2 The three plaintiffs (collectively "Tritech") were related companies involved in various businesses, including the manufacture of hollow fibre membranes. Tritech possessed information about how to manufacture these hollow fibre membranes at high quality and commercial scale, and this information was kept confidential by Tritech.

11.3 The first defendant ("Duan") was an engineer employed by Tritech, while the second defendant ("Luo") was a senior employee with managerial roles within Tritech. In 2017, Duan resigned from Tritech, citing a need for rest. Unbeknownst to Tritech, Duan had incorporated a competing company ("Dreamem") before resigning. Subsequently, Luo was noticed to have been taking notes about Tritech's production processes and requesting information from Tritech's production staff. Tritech then investigated Duan and Luo, whereupon Tritech discovered the existence of Dreamem and found out that both Duan and Luo had connections with Dreamem. Tritech proceeded to make a trap purchase of Dreamem's hollow fibre membrane products, which were discovered to be identical or similar to Tritech's products. Tritech then dismissed Luo and investigated his work e-mail account, and they discovered that Luo had been forwarding Tritech's documents to his personal e-mail

1 [2023] SGHC 23. This case was decided on 22 February 2023.

account. These documents contained information including Tritech's pricing information, operational procedures and production processes.

11.4 Tritech sued Duan and Luo for breach of confidence. They alleged that Duan and Luo had taken and misused Tritech's confidential information for the benefit of Dreamem.

11.5 The court held that Duan and Luo had breached their equitable duty of confidence to Tritech.[2] Here, the court applied the traditional test for breach of confidence.[3] The first element (that the information has the necessary quality of confidence) was clearly made out as the information concerned was kept secret by Tritech, and was accessible only by a limited number of employees within Tritech.[4] The second element (that the information was imparted in circumstances importing an obligation of confidence) was also clearly made out as the information concerned was imparted to Duan and Luo when they were employees subject to various contractual confidentiality obligations.[5]

11.6 In relation to the third element (that there was misuse of the confidential information), Tritech relied on several pieces of circumstantial evidence to establish that Duan and Luo had misused their confidential information. The pieces of circumstantial evidence were that: (a) Dreamem's products were identical or substantially similar to Tritech's products; (b) Dreamem could produce its products within a short period of time after its incorporation although it had no expertise; and (c) the time at which Dreamem began producing its products was close to the time at which Luo forwarded Tritech's confidential information to his personal e-mail account.[6] Taken together, these pieces of circumstantial evidence were sufficient to persuade the court that Tritech's confidential information had been used to help Dreamem produce hollow fibre membranes. Thus, Tritech was able to prove misuse of its confidential information, even though there did not appear to be direct evidence of such misuse.

2 *Tritech Water Technologies Pte Ltd v Duan Wei* [2023] SGHC 23 at [126].
3 *Tritech Water Technologies Pte Ltd v Duan Wei* [2023] SGHC 23 at [101].
4 *Tritech Water Technologies Pte Ltd v Duan Wei* [2023] SGHC 23 at [102]–[105].
5 *Tritech Water Technologies Pte Ltd v Duan Wei* [2023] SGHC 23 at [106]–[110].
6 *Tritech Water Technologies Pte Ltd v Duan Wei* [2023] SGHC 23 at [111].

B. Shanghai Afute Food and Beverage Management Co Ltd v Tan Swee Meng – *Test for breach of confidence*

11.7 *Shanghai Afute Food and Beverage Management Co Ltd v Tan Swee Meng*[7] was a General Division case involving a franchisor's claim for breach of confidence against its erstwhile franchisee. This case consolidates the recent developments in the law of confidence and provides a clear framework for plaintiffs seeking to bring an action for breach of confidence.

11.8 In this case, the plaintiff was a Shanghai-incorporated company which was in the business of selling fruit- and vegetable-infused coffee. The plaintiff sought franchisees to operate franchise businesses under its "After Coffee" trade mark. Discussions were had with the first defendant ("Tan"), and the parties eventually signed a franchise agreement for Tan to operate the franchise in Singapore. To operate the franchise, Tan incorporated the second defendant ("Stay Victory"). However, at some point, the parties' relationship deteriorated, and Tan began to run a competing business (under the "Beyond Coffee" trade mark) selling beverages similar to what the parties had agreed Tan would sell under the "After Coffee" trade mark.

11.9 The plaintiff brought proceedings against the defendants for breach of confidence. The plaintiff alleged that the defendants had misused several pieces of confidential information (such as beverage recipes, pricing information and details about product branding) that was conveyed to Tan pursuant to the franchise agreement. Separately, but for similar reasons, the plaintiff also claimed that the defendants had breached a contractual confidentiality obligation in their franchise agreement.

11.10 The court held that the defendants were in breach of their contractual confidentiality obligations to the plaintiff. Clause 6(5) of the franchise agreement obliged the defendants not to "reveal or sell the brand and trade secrets of [the plaintiff] to any other individual or company".[8] Although the plaintiff's claim failed in respect of most of the categories of information that was alleged to have been misused, the plaintiff's claim did succeed in relation to its recipes and ingredients, as the court found that the defendants had made an "unauthorised sale and revelation of

7 [2024] 3 SLR 1098. This case was decided on 15 February 2023.

8 *Shanghai Afute Food and Beverage Management Co Ltd v Tan Swee Meng* [2024] 3 SLR 1098 at [11].

the plaintiff's recipes" to the competing business which used recipes that were highly similar to those of the plaintiff.[9]

11.11 Turning to the claim for breach of confidence, the court began by setting out a general framework consolidating the case law developments occurring after the seminal decision in *I-Admin (Singapore) Pte Ltd v Hong Ying Ting*[10] ("*I-Admin*"). This framework is worth citing in full:[11]

> (a) First, determine which interest the action for breach of confidence seeks to protect:
>
> > (i) wrongful gain interest, where the defendant has made unauthorised use or disclosure of confidential information and thereby gained a benefit; or
> >
> > (ii) wrongful loss interest, where the plaintiff is seeking protection for the confidentiality of the information per se, which is loss suffered so long as a defendant's conscience has been impacted in the breach of the obligation of confidentiality.
>
> (b) If the wrongful gain interest is at stake, the traditional approach in *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41 ('*Coco*') applies: *Lim Oon Kuin and others v Rajah & Tann Singapore LLP and another appeal* [2022] 2 SLR 280 ('*Lim Oon Kuin*') at [39] and [41]. The *Coco* test requires the plaintiff to establish the following:
>
> > (i) That the information in question has the necessary quality of confidence about it.
> >
> > (ii) The information must have been imparted in circumstances importing an obligation of confidence.
> >
> > (iii) There must be an unauthorised use of the information, and in appropriate cases, this use must be to the detriment of the party who originally communicated it.
>
> (c) If the wrongful loss interest applies, the test is the modified approach promulgated under *I-Admin*.
>
> > (i) If the plaintiff proves [(b)(i)]–[(b)(ii)] (*ie*, the relevant information had the necessary quality of confidence and it was imparted in circumstances importing an obligation of confidence), it is presumed that the conscience of the defendant has been impinged (*I-Admin* at [61]). The presumption may be rebutted if the defendant adduces proof that his conscience was not affected in the circumstances in which the plaintiff's wrongful loss interest had been

9 *Shanghai Afute Food and Beverage Management Co Ltd v Tan Swee Meng* [2024] 3 SLR 1098 at [90]–[94].

10 [2020] 1 SLR 1130.

11 *Shanghai Afute Food and Beverage Management Co Ltd v Tan Swee Meng* [2024] 3 SLR 1098 at [100].

harmed or undermined. The burden that shifts to the defendant at the third limb of the modified test is a legal burden, not an evidential one: *Lim Oon Kuin* at [40].

11.12 This framework makes it clear that the appropriate test for breach of confidence in any case depends on the interests sought to be protected by the plaintiff. Therefore, it is of vital importance for a plaintiff to plead the interest that he is seeking to protect.

11.13 The court proceeded to apply the framework that it had expounded. First, the court found that the interest sought to be protected by the plaintiff was the wrongful gain interest, because the pleaded case of the plaintiff was that the defendants had used the plaintiff's confidential information without authorisation and for their own benefit.[12] Second, the court applied the traditional *Coco v AN Clark (Engineers) Ltd*[13] ("*Coco*") test for breach of confidence. Here, the court found that the plaintiff's recipes and ingredients were confidential (although the plaintiff failed to establish the confidentiality of the other categories of information);[14] the defendants were bound by an obligation of confidence, arising out of their contractual and commercial relationships;[15] and there was a misuse of the plaintiff's confidential information.[16] Therefore, the plaintiff's claim for breach of confidence succeeded, at least in part.

11.14 One point of interest that emerged in this case is that the court appears prepared to assess the plaintiff's pleaded case to determine which interest the plaintiff is, in substance, pleading. Thus, although the plaintiff here sought to rely on the modified *I-Admin* test, the court nevertheless decided that, based on the plaintiff's pleadings, the appropriate test was the traditional *Coco* test.[17]

11.15 This case left open the question of whether a plaintiff can plead both interests in the same case. This question was the subject of the next case to be discussed below.

12 *Shanghai Afute Food and Beverage Management Co Ltd v Tan Swee Meng* [2024] 3 SLR 1098 at [104].
13 [1969] RPC 41.
14 *Shanghai Afute Food and Beverage Management Co Ltd v Tan Swee Meng* [2024] 3 SLR 1098 at [105]–[108].
15 *Shanghai Afute Food and Beverage Management Co Ltd v Tan Swee Meng* [2024] 3 SLR 1098 at [109].
16 *Shanghai Afute Food and Beverage Management Co Ltd v Tan Swee Meng* [2024] 3 SLR 1098 at [110].
17 *Shanghai Afute Food and Beverage Management Co Ltd v Tan Swee Meng* [2024] 3 SLR 1098 at [103].

C. Amber Compounding Pharmacy Pte Ltd v Lim Suk Ling Priscilla – *Test for breach of confidence*

11.16 *Amber Compounding Pharmacy Pte Ltd v Lim Suk Ling Priscilla*[18] was a General Division case wherein the court sought solely to address a specific legal issue: Whether a plaintiff in an action for breach of confidence can claim for damages both under the traditional *Coco* test and the modified *I-Admin* test?[19]

11.17 In this case, the two plaintiffs sued six defendants for breach of confidence. Consent judgments were obtained against some of the defendants. In these consent judgments, the first and second defendants unconditionally admitted that they had taken and used the plaintiffs' confidential information without authorisation, with damages to be assessed. The plaintiffs and the first and second defendants prepared to go on trial to assess the damages to be paid by the defendants, and they filed a list of issues for that trial.

11.18 One of the issues was whether the plaintiffs could claim both damages under the traditional *Coco* test and equitable damages under the modified *I-Admin* test. The court directed the parties to either reach an agreement on that issue or file an application to preliminarily determine the issue before trial. As it appears, the parties were unable to reach an agreement on the issue. This led to the present case, in which the court sought to determine that sole issue.

11.19 The court held that a plaintiff can concurrently plead the wrongful gain interest and the wrongful loss interest when bringing an action for breach of confidence – as such, the plaintiff can claim both damages under the traditional *Coco* test and equitable damages under the modified *I-Admin* test.[20]

11.20 Three reasons were given for the court's decision. First, none of the authorities by the Court of Appeal precluded a plaintiff from claiming for both his wrongful gain interest and his wrongful loss interest.[21] Second, the Court of Appeal's rationale for the modified *I-Admin* test was to *increase* protection for confidential information by filling a lacuna in the law (namely, that the law did not provide adequate protection for

18 [2023] SGHC 241. This case was decided on 31 August 2023.

19 For context about the two tests, the reader may wish to refer to para 11.11 of this chapter.

20 *Amber Compounding Pharmacy Pte Ltd v Lim Suk Ling Priscilla* [2023] SGHC 241 at [16].

21 *Amber Compounding Pharmacy Pte Ltd v Lim Suk Ling Priscilla* [2023] SGHC 241 at [18]–[21].

a plaintiff's wrongful loss interest).[22] Third, there were no conflicting *obiter dicta* from previous High Court decisions.[23] It is submitted that the three reasons given by the court were wholly sound.

11.21 Notably, the court also explained why it is correct *in principle* to allow a plaintiff to recover for both his wrongful gain interest and his wrongful loss interest. According to the court, the two interests are "distinct"; the traditional *Coco* test and the modified *I-Admin* test "each seek to protect different wrongs that have been committed by the defendant against the plaintiff, and the plaintiff should be entitled to protect both interests".[24] It is argued, in agreement with the court's view, that it would be illogical to prevent a plaintiff from pleading both the wrongful gain interest and the wrongful loss interest in a situation where the plaintiff had in fact suffered harms to both interests. Indeed, the court provided a clear hypothetical illustration where such a situation would arise: where a defendant takes ten confidential documents from the plaintiff, and proceeds to use only three of the documents, the plaintiff should be able to recover for his wrongful gain interest and his wrongful loss interest, since there has been both a wrongful taking and wrongful use of his confidential information.[25]

11.22 Another point of interest is that the court mentioned that the parties did not argue the issue of whether a plaintiff could, *in respect of the same document*, claim for his wrongful gain interest and wrongful loss interest.[26] As such, this issue was not decided in this case.

II. Data protection

A. RedMart Limited – *Consent obligation*

11.23 In *RedMart Limited*,[27] an organisation successfully relied on the legitimate-interest exception ("Legitimate Interest Exception") to the consent obligation ("Consent Obligation") of the Personal Data

22 *Amber Compounding Pharmacy Pte Ltd v Lim Suk Ling Priscilla* [2023] SGHC 241 at [22].
23 *Amber Compounding Pharmacy Pte Ltd v Lim Suk Ling Priscilla* [2023] SGHC 241 at [23]–[30].
24 *Amber Compounding Pharmacy Pte Ltd v Lim Suk Ling Priscilla* [2023] SGHC 241 at [31].
25 *Amber Compounding Pharmacy Pte Ltd v Lim Suk Ling Priscilla* [2023] SGHC 241 at [31].
26 *Amber Compounding Pharmacy Pte Ltd v Lim Suk Ling Priscilla* [2023] SGHC 241 at [31].
27 [2023] SGPDPC 1. This decision was issued on 18 January 2023.

Protection Act 2012[28] ("PDPA"). This case provides a useful illustration of how organisations may seek to rely on the Legitimate Interest Exception. In addition, this case also provides guidance on other exceptions to the Consent Obligation, and on deemed consent by voluntary provision.

11.24 In this case, the organisation ("RedMart") operated two warehouses in which it stored goods. Suppliers regularly visited these warehouses. To control visitors' access to the warehouses, RedMart set up security checkpoints. The security checkpoints would use tablet computers to take photographs of the visitors' identification documents ("ID photographs"). According to RedMart, the purpose for collecting visitors' ID photographs was to "deter acts that could compromise food safety and facilitate investigations of food safety incidents".[29] No notices were put up at the security checkpoints to inform visitors of this purpose.

11.25 The Personal Data Protection Commission ("PDPC") investigated RedMart's practice of collecting visitors' ID photographs, after receiving a complaint about that practice.

11.26 In its preliminary decision, the PDPC found that RedMart did not obtain valid consent for collecting the visitors' ID photographs, because RedMart had failed to notify the visitors about the purpose for taking the ID photographs.[30] In principle, this was a breach of the Consent Obligation (which requires organisations to obtain valid consent from individuals before collecting their personal data). Nevertheless, the PDPC suggested that RedMart could potentially rely on the Legitimate Interest Exception to the Consent Obligation, since RedMart appeared to have a legitimate interest in ensuring "public hygiene and safety".[31]

11.27 Accordingly, the PDPC's preliminary decision was to give directions to RedMart to take certain steps to bring itself into compliance with the PDPA.[32]

11.28 In response to the PDPC's preliminary decision, RedMart represented that it was not actually in breach of the Consent Obligation, because it was permitted to collect the ID photographs pursuant to certain exceptions to the Consent Obligation and/or based on the deemed consent of the visitors.[33] Additionally, RedMart represented that

28 2020 Rev Ed.
29 *RedMart Limited* [2023] SGPDPC 1 at [2].
30 *RedMart Limited* [2023] SGPDPC 1 at [5].
31 *RedMart Limited* [2023] SGPDPC 1 at [6]
32 *RedMart Limited* [2023] SGPDPC 1 at [9].
33 *RedMart Limited* [2023] SGPDPC 1 at [10].

it intended to rely on the Legitimate Interest Exception in future.[34] These representations are discussed below.

(1) National-interest exception

11.29 The national-interest exception ("National Interest Exception") to the Consent Obligation permits organisations to collect, use or disclose personal data without obtaining consent, if the collection, use or disclosure of the personal data is in the national interest.[35] The term "national interest" is defined as including "national defence, national security, public security, the maintenance of essential services and the conduct of international affairs".[36]

11.30 RedMart represented that it was permitted to collect the ID photographs based on the National Interest Exception, because it was in the national interest to verify visitors' identities "to a high fidelity" and to "deter potential food security incidents".[37] However, the PDPC rejected RedMart's representation, because RedMart's concerns about food safety were limited to its own warehouses and these concerns did not reach the level of "national interest" within the meaning of the PDPA.[38]

11.31 Thus, this case suggests that a matter is not in the "national interest" merely because it has some impact on the public. It may be argued that the matter must relate to something fundamental to the continued existence of the nation, as indicated by the PDPA's non-exhaustive list of matters falling within the definition of "national interest" (such as "national defence" and "national security").

(2) Investigations exception

11.32 The investigations exception ("Investigations Exception") to the Consent Obligation permits organisations to collect, use or disclose personal data without obtaining consent, if the collection, use or disclosure of the personal data is "necessary for any investigation or proceedings".[39]

11.33 RedMart represented that it was permitted to collect the ID photographs based on the Investigations Exception, because it was

34 *RedMart Limited* [2023] SGPDPC 1 at [13].
35 Personal Data Protection Act 2012 (2020 Rev Ed) First Schedule, Pt 2, para 2.
36 Personal Data Protection Act 2012 (2020 Rev Ed) s 2(1).
37 *RedMart Limited* [2023] SGPDPC 1 at [10].
38 *RedMart Limited* [2023] SGPDPC 1 at [11].
39 Personal Data Protection Act 2012 (2020 Rev Ed) First Schedule, Pt 3, para 3.

"necessary to facilitate investigations into food security incidents".[40] This representation was rejected by the PDPC – to rely on the Investigations Exception, the collection of the personal data "must be for the purpose of an ongoing investigation and cannot be for a hypothetical future investigation".[41]

11.34 This case thus makes it clear that organisations cannot rely on the Investigations Exception in the absence of any *current* ongoing investigation.

(3) Deemed consent by voluntary provision

11.35 Individuals may be deemed to have given their consent to the collection, use or disclosure of their personal data for a purpose, if they voluntarily provided their personal data to the organisation for that purpose, and it was reasonable that they would voluntarily provide that personal data.[42] This is "deemed consent by voluntary provision".

11.36 RedMart represented that the visitors could be deemed to have given their consent to the collection of their ID photographs, because they had "volunteered" their identification documents at the security checkpoints.[43] However, the PDPC found that the visitors could not be said to have "voluntarily provided" their identification documents, as they were "not given a choice in the matter".[44]

11.37 This case demonstrates that organisations cannot rely on deemed consent by voluntary provision unless the individuals involved have a choice as to whether to provide their personal data to the organisation. As for what amounts to a "choice" in this regard, this case seems to suggest that individuals do not really have a "choice" if the consequence of refusal is that the individual cannot carry out their work with the organisation. In this case, if the visitors refused to provide their identification documents, they would not have been able to "make deliveries as part of their employment or business".[45] Therefore, although the visitors could theoretically have refused to provide their identification documents, this did not mean that they had a "choice" such that their provision of their identification documents could be said to have been "voluntary".

40 *RedMart Limited* [2023] SGPDPC 1 at [10].
41 *RedMart Limited* [2023] SGPDPC 1 at [11].
42 Personal Data Protection Act 2012 (2020 Rev Ed) s 15(1).
43 *RedMart Limited* [2023] SGPDPC 1 at [10].
44 *RedMart Limited* [2023] SGPDPC 1 at [11].
45 *RedMart Limited* [2023] SGPDPC 1 at [5].

(4) Legitimate-interest exception

11.38 Under the legitimate-interest exception ("Legitimate Interest Exception"), organisations may collect, use or disclose personal data if the collection, use or disclosure is in the legitimate interests of the organisation or another person.[46]

11.39 There are certain requirements that must be satisfied by an organisation who wishes to rely on the Legitimate Interest Exception. In this case, RedMart provided the PDPC with an assessment of how it would satisfy those requirements. As RedMart's assessment was accepted by the PDPC, this case provides an instructive illustration of how organisations can rely on the Legitimate Interest Exception.

11.40 Generally, it appears that organisations can meet the requirements for the Legitimate Interest Exception by taking five practical steps.

11.41 The first step is to identify the legitimate interests in the collection, use or disclosure of the personal data. In this case, the legitimate interest was "deterring and investigating potential food security incidents".[47]

11.42 The second step is to identify the likely adverse effects that the collection, use or disclosure of the personal data will cause to the affected individuals. In this case, the adverse effect caused by the collection of visitors' ID photographs was that the visitors would be exposed to the "risks of unauthorised use and disclosure of their personal data".[48]

11.43 The third step is to identify and implement reasonable measures to eliminate, mitigate or reduce the likelihood of the adverse effects. In this case, RedMart had implemented a range of protective measures to prevent the unauthorised use and disclosure of the ID photographs, such as restricting access to the tablets used to collect the ID photographs.[49]

11.44 The fourth step is to assess whether the legitimate interests outweigh the (residual) adverse effects. In this case, the legitimate interest was assessed to be "significant" because of the "potential harm that could be caused to the public by a food contamination incident", whereas the adverse effects were assessed to be "low" because of the protective

46 Personal Data Protection Act 2012 (2020 Rev Ed) First Schedule, Pt 3, para 1.
47 *RedMart Limited* [2023] SGPDPC 1 at [14].
48 *RedMart Limited* [2023] SGPDPC 1 at [15].
49 *RedMart Limited* [2023] SGPDPC 1 at [15].

measures implemented by RedMart.[50] As such, the legitimate interests outweighed the adverse effects.

11.45 The fifth step is to provide the affected individuals with reasonable access to information about the collection, use or disclosure of their personal data pursuant to the Legitimate Interest Exception. In this case, RedMart opted to put up notices at their security checkpoints.[51]

B. Tai Shin Fatt – *Dictionary attack*

11.46 In *Tai Shin Fatt*,[52] an individual was found to have breached the s 48B prohibition of the PDPA ("Section 48B Prohibition").[53] This is the first published decision involving a breach of the Section 48B Prohibition, which was recently introduced as part of the 2020 amendments to the PDPA. Additionally, this case elucidates the concept of "dictionary attack" within the meaning of the Section 48B Prohibition.

11.47 In this case, the individual ("Tai") was a director who managed a team of insurance agents. Tai sought to make automated marketing calls and engaged the services of two vendors for this purpose. The vendors provided a system which would automatically make calls to telephone numbers and deliver an audio script.

11.48 Tai wished to test the vendors' system with some telephone numbers. He authorised one of his staff to automatically generate telephone numbers in bulk using Microsoft Excel. The method for generating the telephone numbers was to use common telephone numbers for the first four digits, and randomly generated four-digit strings for the last four digits. 18,809 telephone numbers were generated in this way. These numbers were uploaded onto the vendors' system, which proceeded to make 22,268 automated calls.

11.49 The PDPC found that Tai had breached the Section 48B Prohibition of the PDPA. The Section 48B Prohibition prohibits persons from sending messages with a Singapore link to telephone numbers acquired by dictionary attack or address-harvesting software.[54] In this case, all the elements constituting a breach of the Section 48B Prohibition were satisfied: first, Tai had authorised the calls and caused them to be made; second, messages were sent through the calls, in the form of audio

50 *RedMart Limited* [2023] SGPDPC 1 at [16].
51 *RedMart Limited* [2023] SGPDPC 1 at [16].
52 [2023] SGPDPC 2. This decision was issued on 14 February 2023.
53 Personal Data Protection Act 2012 (2020 Rev Ed) s 48B.
54 Personal Data Protection Act 2012 (2020 Rev Ed) s 48B.

scripts; third, the calls were made in Singapore, which meant that they had a "Singapore link"; fourth, the telephone numbers were automatically generated via Microsoft Excel, which meant that they were produced using a "dictionary attack".[55]

11.50 This case provides some insight on the concept of a "dictionary attack", which is defined as "the method by which the telephone number of a recipient is obtained using an automated means that generates possible telephone numbers by combining numbers into numerous permutations".[56] Specifically, this case shows that the generation of telephone numbers can constitute a "dictionary attack" even if the process of generating the telephone numbers was not fully automated. In this case, the telephone numbers were not generated by fully-automated means as there was some manual work involved (although the last four digits of each number were randomly generated by Microsoft Excel, the first four digits were manually selected) – nevertheless, this method used to generate the telephone numbers was held to be a "dictionary attack".

C. Breach of the Purpose Limitation Obligation by Tipros – *Purpose-limitation obligation*

11.51 In *Breach of the Purpose Limitation Obligation by Tipros*,[57] an organisation was found to have breached the limitation of purpose obligation ("Purpose Limitation Obligation"). This case demonstrates how the Purpose Limitation Obligation applies in the context of an online dispute where the organisation discloses the personal data of an individual in response to that individual's public comments.

11.52 The organisation ("Tipros") was in the business of selling and repairing electrical appliances. Tipros was engaged by the complainant to repair her refrigerator. The complainant was unhappy with Tipros's quality of service and gave Tipros a one-star review on Tipros's Google review page. In her review, the complainant made some allegations against Tipros (for example, she alleged that her refrigerator stopped working two weeks after Tipros repaired it). Tipros responded to the review, and in its response Tipros disclosed the complainant's residential address and mobile phone number. The complainant then complained to the PDPC about this disclosure of her personal data.

11.53 The PDPC found that Tipros had breached the Purpose Limitation Obligation of the PDPA. In particular, Tipros had failed to

55 *Tai Shin Fatt* [2023] SGPDPC 2 at [17].
56 Personal Data Protection Act 2012 (2020 Rev Ed) s 48A(1).
57 [2023] SGPDPC 7. This decision was issued on 8 June 2023.

comply with s 18(*a*) of the PDPA, which provides that organisations may collect, use or disclose personal data only for purposes that a reasonable person would consider appropriate in the circumstances.[58] The PDPC considered that Tipros's disclosure of the complainant's personal data was unnecessary, because Tipros did not need to disclose the complainant's address or phone number in order to provide an explanation in response to the complainant's review.[59] Tipros's disclosure of the complainant's personal data was therefore "unreasonable and disproportionate".[60]

11.54 The PDPC also provided more general guidance on how the Purpose Limitation Obligation will apply in the situation where an organisation discloses personal data when responding to an individual's public comments about the organisation.

11.55 First, in relation to s 18(*a*) of the PDPA, if an individual makes a comment about the organisation on a public platform and the comment is one which invites an explanation, then advancing that explanation would be a reasonable purpose for disclosing the individual's personal data; the disclosure is reasonable if: (a) it is necessary for an effective explanation; and (b) the "extent of disclosure is proportionate".[61]

11.56 Second, in relation to s 18(*b*) of the PDPA (which provides that organisations can only collect, use or disclose personal data for purposes of which the individual has been notified), the PDPC took the view that an individual who comments publicly about an organisation is deemed to have been informed of the purpose for which the organisation is disclosing his personal data (namely, for the purpose of giving an explanation in response to his comment), as long as the "organisation's response is for a reasonable purpose that is a natural consequence of the individual's comments".[62] The idea here appears to be "deemed notification by own conduct": an individual can be deemed to be informed of the natural consequences of his own conduct since he must surely be able to foresee those consequences. If one of those natural consequences is that the organisation will disclose his personal data for the purpose of responding to him, then it would perhaps be superfluous for the organisation to expressly notify him of that purpose. It remains to be seen whether this

58 Personal Data Protection Act 2012 (2020 Rev Ed) s 18(*a*).
59 *Breach of the Purpose Limitation Obligation by Tipros* [2023] SGPDPC 7 at [17].
60 *Breach of the Purpose Limitation Obligation by Tipros* [2023] SGPDPC 7 at [16].
61 *Breach of the Purpose Limitation Obligation by Tipros* [2023] SGPDPC 7 at [14].
62 *Breach of the Purpose Limitation Obligation by Tipros* [2023] SGPDPC 7 at [15].

notion of "deemed notification by own conduct" may be extended to other contexts.
