



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 616 OF 2024

MAINA JACKSON IRUNGU.....COMPLAINANT

-VERSUS-

FAMILY BANK LIMITED.....RESPONDENT

DETERMINATION

(Pursuant to Section 8(1)(f) and 56 of the Data Protection Act, 2019 and Regulation 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021)

A. INTRODUCTION

1. The Complainant lodged a complaint on 25th April 2024 alleging that he has been receiving email statements from the Respondent purporting to be for his bank account despite the fact that he does not hold an account with the Respondent's Bank.

B. LEGAL BASIS

2. Article 31(c) and (d) of the Constitution of Kenya provides for the right to privacy. Consequently, as an effort to further guarantee the same, the Data Protection Act, 2019 (hereinafter known as 'the Act') was enacted.
3. The Office of the Data Protection Commissioner (hereinafter 'this Office' and/or 'the Office') was established pursuant to Section 5 of the Act and is mandated with the responsibility of regulating the processing of personal data; ensuring that the processing of personal data of a data subject is guided by the principles set out in Section 25 of the Act; protecting the privacy of individuals; establishing the legal and institutional mechanism to protect personal data and

providing data subjects with rights and remedies to protect their personal data from processing that is not in accordance with the Act.

4. Section 8(1)(f) of the Act provides that the Office can receive and investigate any complaint by any person on infringements of the rights under the Act. Furthermore, Section 56(1) of the Act provides that a data subject who is aggrieved by a decision of any person under the Act may lodge a complaint with the Data Commissioner in accordance with the Act.
5. This determination is premised on the provisions of Regulation 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 (hereinafter as 'the Enforcement Regulations') which states that the Data Commissioner shall, upon the conclusion of the investigations, make a determination based on the findings of the investigations.

C. BACKGROUND OF THE COMPLAINT

6. This Office received a complaint from the Complainant on 25th April 2024. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations from the Complainant who was an aggrieved data subject.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondent of the complaint filed against it *vide* a letter dated 2nd May, 2024 referenced ODPC/CONF/1/5 VOL 1(958). In the Notification of the Complaint, the Respondent was informed that if the allegations by the Complainant were true, it was in violation of various provisions of the Act. Further, the Respondent was asked to provide this Office with the following: -
 - a. A response to the allegations made against it by the Complainant;
 - b. Any relevant materials or evidence in support of the response;
 - c. The legal basis relied upon to process and engage with the Complainant's personal data;
 - d. Proof of consent from the Complainant to send him emails as alleged;
 - e. A detailed description of how it fulfills the rights of a data subject;

- f. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant and to ensure that such occurrence mentioned in the complaint does not take place again; and
 - g. Any other relevant information it wishes the Office to consider.
8. The Respondent responded to the Notification of Complaint letter *vide* a letter dated 23rd May 2024.
9. This determination is therefore as a result of analysis of the complaint as received, the response from the Respondent and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

10. The complaint relates to the alleged sending of numerous emails to the Complainant, containing account statements not associated with him.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANTS' CASE

11. The Complainant alleged that, over the last six months, he has been receiving email statements from the Respondent purporting to be for his bank account. The Complainant provided screenshots of the said emails as proof.
12. The Complainant stated that he visited the Respondent's Nyeri Branch to get clarification on the issue and to clarify that he did not hold an account with the Respondent's Bank. Three months later, he was still receiving email statements from the Respondent regarding an account that he was not affiliated to.
13. The Complainant averred that he wrote a letter to the Respondent requesting them to edit and clarify the same issue *via* the Respondent's official email but the Respondent did not respond. The Complainant attached a screenshot of the letter sent to the Respondent *via* email.
14. The Complainant stated that he wanted to get a confirmation from the Respondent on whether he has an account with them or if it is an error so as to prevent further actions.

ii. THE RESPONDENT'S RESPONSE

15. The Respondent averred that after conducting investigations, it determined that the Complainant was not a Family Bank Customer and that the Complainant received emails containing E-statements because his email address was erroneously associated with an account holder (XXXX XXXX 9274) at Family Bank. This error occurred during the customer onboarding process wherein the Complainant's email address was captured in the KRA PIN Certificate presented by one of the Respondent's customers.
16. The Respondent stated that they reached out to the Complainant on 13th May 2024, clarifying that the receipt of emails was a result of an oversight on their part and that his data has been deleted and he would not receive any further emails from the Bank. The Respondent provided a letter dated 17th May 2024 as proof.
17. The Respondent averred that the Complainant was unable to decipher the account number since only the last four digits were visible. Furthermore, the Complainant was unable to access the account statements as they are safeguarded with password protection, ensuring access only by the intended recipient.
18. The Respondent stated that it has stopped processing the Complainant's data and communicated to him as he is not a customer and that they have no legal basis for processing or retaining his personal data.
19. Further, they have deleted his data from their database as the email address is irrelevant and not necessary to its processing operations. They have also reviewed and corrected the inaccuracy in their data records in line with the data accuracy principle.
20. The Respondent stated that it relied on performance of a contract as the legal basis for Sending E-statements to its customers. The emails containing the statements sent to the Complainant (though wrongfully) were part of its contractual obligations to provide account-related information to the rightful

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account holder. Further, the Bank had every reasonable expectation that the email address referenced in the KRA PIN belonged to our customer.

21. The Respondent averred that it has since verified that the emails were intended for a Family Bank customer, but unfortunately were misdirected to the Complainant's email.
22. Regarding the right to erasure, the Respondent stated that data subjects can request the deletion of their personal data under specific circumstances, such as when the data is no longer needed, or consent is withdrawn. Assessment is done of each request against legal requirements to confirm the erasure of data or provide justification if the request cannot be fulfilled.
23. Regarding the right to object to the processing of personal data, the Respondent stated that data subjects can object to the processing of their personal data for direct marketing, research, or other purposes based on legitimate interests by writing to dataprotection@familybank.co.ke.
24. In conclusion, the Respondent stated that upon discovering the error, it immediately ceased all email communications to the Complainant and deleted his email address. In addition, it rectified the Account Holder account with the correct customer email address.

F. INVESTIGATIONS UNDERTAKEN

25. The Office analysed the complaint as lodged, the Respondent's response, and all the supporting documents provided by both parties.
26. The Office established that the Complainant indeed received emails containing e-statements from the Respondent from around March 2023 all through to May 2024.
27. The Office also established that the Respondent continued to send the said emails despite the fact that the Complainant had raised the issue with them and requested them to stop sending him emails with statements belonging to their customer.

28. It is evident that the Respondent did not take any steps to erase the Complainant's personal data from its database and stop sending him the said emails despite the fact that the Complainant had written to them requesting for erasure of his personal data. The Respondent only took steps to correct the issue after it received a Notification of Complaint letter from this Office.

G. ISSUES FOR DETERMINATION

29. In light of the above, the following issues fall for determination by this Office:

- i. Whether there was a violation of the Complainant's rights under the Act;
- ii. Whether the Respondent fulfilled its obligations under the Act; and
- iii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THERE WAS A VIOLATION OF THE COMPLAINANT'S RIGHTS UNDER THE ACT

30. The Complainant is a data subject as per the definition under the Act and has rights as provided for under the Act.

31. Section 2 of the Act defines personal data as *any information relating to an identified or identifiable natural person*. It further defines an identifiable natural person as, *"a person who can be identified directly or indirectly, by reference to an identifier such as name, an identification number, location data, an **online identifier** or ..."*

32. The Complainant's email address is therefore his personal data.

33. Section 40(1)(b) of the Act provides for the right of erasure and states that, *"a data subject may request a data controller or data processor to erase or destroy without undue delay personal data that the data controller or data processor is no longer authorized to retain, irrelevant, excessive or obtained unlawfully."*

34. The Complainant exercised his right of erasure by writing a letter, dated 27th February 2024, to the Respondent. The Respondent did not act on the request for erasure and continued sending emails to the Complainant. The Respondent

only corrected the issue and stopped sending the emails after it received a Notification of Complaint letter from this Office.

35. Regulation 12(3) of the Data Protection (General) Regulations, 2021 states that ***"a data controller or a data processor shall respond to a request for erasure within fourteen days of the request."*** The Respondent intentionally or negligently ignored the Complainant's request for erasure and only complied with it after it received the Notification of Complaint letter from this Office, which was long after the 14-day period provided for under the above regulation had lapsed.

36. From the foregoing, this Office finds that the Complainant's right of erasure of his personal data was violated by the Respondent.

II. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT

37. The Respondent is a data controller within the definitions of the Act and therefore has obligations pursuant to the Act.

38. The Respondent had an obligation under Section 25 of the Act to ensure that it takes every reasonable step to ensure that any inaccurate personal data in its custody is erased or rectified without delay.

39. The Respondent erroneously captured its customer's email address leading to the sending of several emails to the Complainant's email address. Despite requests to erase his personal data, the Respondent failed to do so in a timely manner as required by Regulation 12(3) of the Data Protection (General) Regulations, 2021.

40. From the above, this Office finds that the Respondent did not fulfil its obligations as it did not correct inaccurate data in its custody in accordance with the principle of accuracy.

III. WHETHER THE COMPLAINANT IS ENTITLED TO ANY REMEDIES UNDER THE ACT AND THE ATTENDANT REGULATIONS.

41. Pursuant to Regulation 14(2) of the Enforcement Regulations, a determination shall state the remedy to which the complainant is entitled. Further, the remedies are provided for in Regulation 14(3) of the Enforcement Regulations.
42. Section 65 of the Act provides for compensation to data subjects and states that, "*a person who suffers damage by reason of a contravention of a requirement of the Act is entitled to compensation for that damage from the data controller.*"
43. Section 65(4) of the Act states that, "*damage includes financial loss and damage not involving financial loss, including distress.*"
44. Further, Regulation 14(3)(e) of the Enforcement Regulations provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.
45. In considering whether to issue compensation, this Office takes into consideration the fact that the Respondent either intentionally or negligently violated the Complainant's right of erasure of his personal data by failing to correct the email address erroneously captured in its database and stop sending the said emails to the Complainant. Moreover, it took the intervention of this Office for the issue to be addressed by the Respondent.
46. This Office therefore awards the Complainant **Kenya Shillings two hundred and fifty thousand (KES 250,000)** as compensation for the violation of his right of erasure as provided for under the Act.
47. The Respondent is directed to ensure that personal data collected from its customers is accurate and where necessary kept up to date. The Respondent is also directed to ensure that inaccurate personal data is erased or rectified without delay to avoid complaints of this nature and administrative fines that may be imposed upon them in the event this Office receives similar complaints.

H. FINAL DETERMINATION

48. The Data Commissioner therefore makes the following final determination;

- i. The Respondent is hereby found liable.
- ii. The Respondent is hereby ordered to compensate the Complainant **Kenya Shillings Two Hundred and Fifty Thousand (KES 250,000)**; and
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 23rd day of July 2024.



**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**

