



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0697 OF 2025

ANDREW ENDOVO.....COMPLAINANT

-VERSUS-

STANDARD INVESTMENT BANK.....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 his complaint against the Respondent on the alleging that the Respondent agent unlawfully sent him unsolicited promotional email without his consent.

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 as '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.

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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 14th May 2025 he lodged a complaint against Standard Investment Bank "the Respondent" alleging that the respondent unlawfully sent him unsolicited promotional email without his consent
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondents of the complaint filed against them *vide* a letter dated 5th June, 2025 and referenced ODPC/CIE/CON/2/1/(330). In the Notification of the Complaint, the Respondent was informed that if the allegations by the Complainant were true, they were 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 them by the Complainant;
 - b. Any relevant materials or evidence in support of their response above; including internal policies governing mailing list management, consent withdrawal and Data retention;
 - c. Details of how the complainants email address was obtained and subsequently used for promotional communication, including the names and roles of any personnel involved in managing the mailing list;
 - d. Any contractual agreement with the complainant or lawful basis relied upon that may authorize the sending of the promotional email;

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- e. Proof of consent from the complainant to receive marketing or promotional communication, and any record of withdrawal of such consent, if any;
 - f. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the complainant, including steps taken to prevent further unsolicited communication and to ensure full erasure of the complaints contact details from your systems if;
 - g. Any other information you wish the Office to consider
8. The Respondent submitted a Response to the Notification of Complaint Vide a letter dated 3rd July 2025.
 9. This determination is therefore as a result of analysis of the complaint as received and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

10. It is the Complainant's assertion that the Respondent, through its agent, unlawfully sent him an unsolicited promotional email without his consent, in violation of his data protection rights.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant avers that on 12th May 2025, he received a promotional email from the Respondent agent without his consent promoting investment product known as the Mansa-X Special Fund.
12. The Complainant asserts that he did not sign up for, subscribe to, or provide consent to the Respondent or any of its agents to collect or use their personal data including their email address for direct marketing purposes.
13. The Complainant avers that upon receipt of the email; the Complainant contacted the sender requesting an explanation on the source of their contact information and the legal basis for its use. A 24-hour deadline was issued for a response, which was either not met or was insufficient in addressing the concerns raised.
14. The Complainant sought the following remedies from this Office:

- i) An investigation into the conduct of Respondent and its agent regarding the alleged unlawful processing of personal data.
- ii) An order compelling the Respondent to disclose the source of the Complainant's contact information and whether it was obtained through third-party data trading.
- iii) Appropriate enforcement action against the institution and individual involved, including administrative penalties and/or a directive to cease and desist from such data processing practices.

15. The Complainant provided screenshots of the promotional messages as sent to the Respondent to support their complaint.

ii. THE RESPONDENTS' RESPONSE

16. The Respondent states that on or about 12th May 2025, an agent of the Respondent shared a general post in a WhatsApp group where he and a long-time personal acquaintance were both members. The post merely indicated that the agent worked with the Respondent and invited any interested persons to learn more about its investment product, Mansa-X.

17. Following this post, the said acquaintance reached out to the agent and noted that the Complainant had a keen interest in crypto trading and forex investment. Acting on this information and in utmost good faith, the agent genuinely believed that the Complainant would find value in learning about Mansa-X, a product specifically tailored for individuals with such investment preferences.

18. The agent initially attempted to contact the Complainant by telephone in order to personally introduce the product. However, upon failing to establish contact, and concerned that the opportunity might be missed or appear impersonal, the agent opted to send a single promotional email introducing Mansa-X and extending an invitation for further engagement.

19. The Respondent notes that on the same day, it received an email from the Complainant objecting to the unsolicited communication and expressing an intention to seek legal redress.

20. Upon receipt of the objection, the Respondent avers that it promptly erased the Complainant's contact details from all outreach marketing and prospecting records in order to prevent any further unsolicited communication.
21. The Respondent states that it deeply regrets the issuance of the single promotional email and has since undertaken corrective action. This includes the erasure of the Complainant's data, implementation of safeguards to prevent recurrence, and a review of the internal processes that led to the sending of the said email.
22. Additionally, the Respondent contends that it is prepared to issue a formal undertaking to the Complainant, confirming that his personal data has been permanently erased and that no further promotional communication shall be directed to him unless explicit consent is obtained.
23. The Respondent notes that it maintains a comprehensive IT Policy which was last reviewed on 21st January 2024. However, in light of the present complaint, the Respondent has since initiated a review of this policy with the aim of strengthening controls surrounding promotional emails and maintaining a consent-based outreach database. A copy of the IT Policy is appended herewith.
24. The Respondent avers that while the sending of the email is not denied, there is no evidence of actual damage or loss suffered by the Complainant, whether financial or non-financial. He asserts that The Data Protection Act does not impose strict liability, and compensation under Section 65 thereof is only payable upon proof of damage. Section 65 of the Act clearly provides that a data subject must prove damage be it financial loss or non-financial distress arising from a contravention of the Act. The Complainant has neither pleaded nor provided evidence of any such damage.
25. The Respondent contends that a single unsolicited email promptly remedied does not meet the threshold for compensability. The burden of proof lies with the Complainant, and in this case, he has not discharged that burden.
26. The Respondent relies on previous determinations by this Office which demonstrate that compensation is warranted only in cases of persistent and unremedied breaches:

- i. OPDC Complaint No. 762 of 2024 – Dennis Gathara v Goodtimes Africa, where repeated unsolicited emails were sent despite opt-out requests;
- ii. OPDC Complaint No. 1880 of 2024 – Yasin Abukar v Wananchi Group (Zuku), where the respondent failed to erase data after multiple requests and obstructed investigations;
- iii. OPDC Complaint No. 0372 of 2024 – Kevin Kiprotich Rono v SBM Bank Kenya, where 327 emails were sent over ten months;
- iv. ODPC Complaint No. 1259 of 2024 – Phidale Castro Majiwa Ouma v Whitepath Co. Ltd, involving incessant calls and messages based on inaccurate data.

27. In contrast, the Respondent avers that in the present case, only one email was sent, and the Respondent immediately took steps to delete the Complainant's data and prevent recurrence. These actions constitute clear mitigation. The principle of mitigation in awarding compensation is well-established. In ODPC Complaint No. 0607 of 2023 Perpetual Wanjiku v Casa Vera Lounge, this Office declined to award compensation owing to the mitigation measures taken by the Respondent upon being notified of the breach.

28. The Respondent also relies on judicial authorities confirming that the Data Protection Act does not impose strict liability. In *Smith & Others v TalkTalk Telecom Group Plc [2022] EWHC 1311 (QB)*, and *Various Claimants v Wm Morrison Supermarket Plc [2019] QB 772*, courts emphasized that legal liability does not arise from mere access or breach of personal data; rather, claimants must prove actual harm.

29. The Respondent further draws attention to the local jurisprudence in *David M. Ndeti v Orbit Chemical Industries Ltd [2014] eKLR* and *J. Kudwoli v Eureka Educational & Training Consultants*, which caution against the imposition of strict liability in civil disputes, especially where the conduct is neither reckless nor negligent, and no damage is proved.

30. Accordingly, the Respondent contends that the singular, isolated incident rectified promptly and in good faith does not warrant any award of compensation. The actions of the agent were neither reckless nor malicious, and the data was not misused or disseminated beyond the initial communication.

31. In conclusion, the Respondent respectfully prays that the Office finds as follows:
That the Complainant has not demonstrated actual damage or loss as required under Section 65 of the Data Protection Act;
- i. That the burden of proof has not been discharged by the Complainant;
 - ii. That the mitigating steps taken by the Respondent—including prompt erasure of data, internal review, and policy reform—favour a finding against awarding compensation;
 - iii. That the complaint, though valid in part, does not meet the threshold for compensability under the established legal framework.

iii. THE COMPLAINANT'S REJOINDER

32. The Complainant acknowledges receipt of the Respondent's letter dated 3rd July 2025 and avers that the same contains misleading assertions, evasive reasoning, and an apparent unwillingness by the Respondent to take full accountability for the breach of the Complainant's data rights under the Data Protection Act, 2019.
33. The Complainant notes with concern the posture taken by the Respondent which seems aimed more at shielding itself from responsibility and resisting lawful consequences than demonstrating genuine accountability. The Complainant contends that instead of acknowledging its breach and offering appropriate redress, the Respondent purports to justify its actions using vague and unverifiable claims.
34. Specifically, the Complainant avers that the explanation given in paragraph 4 of the Respondent's response referring to an unnamed acquaintance from an unspecified WhatsApp group is speculative, unverifiable, and designed to obscure rather than clarify. The Respondent purports that this acquaintance supplied the Complainant's contact information, yet fails to provide any detail that could allow for independent verification.
35. Moreover, the Complainant asserts that the Respondent deliberately ignored his explicit written request sent immediately after receiving the unsolicited promotional email on 12th May 2025 to disclose the source of his personal data. The Respondent remained unresponsive until the complaint was formally filed with the Office of the Data Protection Commissioner. The Complainant contends

that this pattern of conduct reflects an internal culture of compliance only when under regulatory scrutiny, contrary to the principles enshrined under the Act.

36. The Complainant further avers that contrary to the Respondent's insinuation, he has never expressed, indicated, or exhibited any interest in cryptocurrency trading, forex investment, or any products marketed by Standard Investment Bank. The claim that he was a suitable prospect for Mansa-X is not only purported without evidence but is entirely unfounded and misleading.
37. The Complainant asserts that the unsolicited communication from the Respondent has led to serious personal consequences. Upon seeing the email, his spouse mistakenly believed that he had been secretly engaging in crypto-related investments an area the couple had mutually agreed to avoid. This misunderstanding has led to emotional distress, strained relations, and a breach of trust within the marriage.
38. The Complainant notes that such intrusion is not minor or inconsequential. Rather, it demonstrates how unauthorized and unconsented data processing can result in real, tangible harm. He contends that the emotional and reputational damage suffered cannot be dismissed as negligible, and that the Respondent's conduct must be viewed through the lens of its broader implications on personal life and dignity.
39. The Complainant avers that punitive and compensatory measures are warranted not only to address the specific harm caused in this case, but also to deter similar conduct by the Respondent and other commercial entities. Upholding the right to privacy requires that violations be met with clear and proportionate consequences.
40. The Complainant therefore respectfully urges the Office to:
- i. Note the Respondent's vague and unverifiable claims regarding data acquisition;
 - ii. Reject the attempt to avoid accountability by shifting blame to unnamed third parties;
 - iii. Consider the real and demonstrated personal harm caused by the unauthorized communication;

- iv. Assert the centrality of consent and transparency as required under the Data Protection Act, 2019;
- v. Award substantial compensation to the Complainant to redress the harm suffered and reaffirm the enforcement authority of the Office.

41. In conclusion, the Complainant contends that the Respondent's actions, omissions, and subsequent justifications fall short of the expectations placed upon data controllers. The privacy violation suffered in this case is neither trivial nor speculative, and this Office is urged to take firm and decisive action in accordance with its mandate under the law.

F. ISSUES FOR DETERMINATION

42. 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 and attendant regulations.
- ii. 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

43. The right to be informed under Section 26(a) of the Data Protection Act, 2019 requires that a data subject be notified of the use to which their personal data is to be put, at or before the point of collection.

44. In the present case, while the Respondent attempts to justify the collection of the Complainant's email address by alleging that it was shared by an individual acquainted with the Complainant in a mutual WhatsApp group, this explanation lacks sufficient specificity and does not demonstrate that the Complainant was ever informed that their data would be collected, processed, or used for promotional purposes.

45. Notably, the communication received by the Complainant promoting Mansa X a financial product of the Respondent was made by an individual who expressly stated that they were working with the Respondent. This further cements the link

between the acquisition of the Complainant's data and the Respondent's commercial outreach activities.

46. The fact that the individual who disclosed the email is a client of the Respondent does not discharge the Respondent's independent obligation to notify the Complainant, nor does it justify the use of the data for unsolicited marketing. The Complainant categorically avers that he had no prior dealings with the Respondent and had never expressed interest in their services.
47. Notably, the Respondent failed to provide any notification or justification upon the Complainant's initial inquiry on how his data had been obtained, only offering an explanation after intervention by the Office.
48. Accordingly, the Respondent's failure to adequately inform the Complainant of the collection and intended use of his personal data constitutes a clear breach of Section 26(a) of the Act.
49. Section 26(c) of the Data Protection Act, 2019, gives a data subject the right to object to the processing of their personal data. This right is reinforced under Section 36, which states that a data subject may object to such processing unless the data controller or processor can demonstrate a compelling legitimate interest that overrides the data subject's rights, or that the processing is necessary for the establishment, exercise, or defence of a legal claim.
50. In the present matter, the Complainant objects to the use of his personal email address to market the Respondent's investment product, Mansa X, without his prior consent. While the Respondent attempts to justify the acquisition of the email address by stating that it was provided by a third party—allegedly an acquaintance of the Complainant and a client of the Respondent—it offers no evidence of having obtained the Complainant's consent or of having carried out a lawful assessment to establish a compelling legitimate interest that would override the Complainant's right to object.
51. Accordingly, the Respondent violated the Complainant's right to be informed under Section 26(a) and the Right to object under Section 26(c) of the Act.

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

52. 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.

53. The Complainant requested this Office to issue an award of compensation. Section 65 of the Act provides 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. The Section indicates that damage included financial loss and damage not involving financial loss including distress.

54. 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.

55. In considering whether to issue compensation, this Office takes into consideration the violation of the Complainant's right to be informed under Section 26(a) and the right to object under Section 26(c). The Office further takes into account the mitigation measures as follows:

- a) The Respondent sent one email to market its product.
- b) The Respondent deleted the Complainant's email address from their database on 10th June.
- c) The Respondent sent a confirmation letter dated 3rd July to affirm the deletion; and
- d) The Respondent committed not to send any further unsolicited communication to the Complainant.

56. In this context, the Respondent is hereby ordered to pay the Complainant **Kenya Shillings Fifty Thousand (Kshs. 50,000)** for the infringement of his rights under the Act.

G. FINAL DETERMINATION

57. The Data Commissioner therefore makes the following final determination: -

- i. The Respondent is hereby found liable.

- ii. The Respondent to pay the Complainant a sum of **Kenya Shillings Fifty Thousand (KES 50,000)** as compensation.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 11th day of August 2025.



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**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**