



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0662 OF 2025

CAROLINE WANGARI GICHURE.....COMPLAINANT

-VERSUS-

OUTLOOK INDEX LIMITED.RESPONDENT

DETERMINATION

(Pursuant to Sections 8(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 alleged that the Respondent without a lawful basis or justified cause denied her the right to access her personal data held in its custody; an act that gave rise to ensuing legal repercussions.

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 (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 9th May 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations from the Complainant who was the 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 20th June 2025 referenced ODPC/CIE/CON/2/1 (398). In the notification of the complaint, the Respondent was informed that if the Complainant's allegations were true, they would be in violation of various sections of the Act. Additionally, the Respondent was asked to provide this Office with the following:
 - a) A response to the allegations made against them by the Complainant;
 - b) A contact person who can provide further details as regards this complaint;
 - c) Any relevant materials or evidence in support of its response above;
 - d) The lawful basis relied upon to process the complainant's personal contact;

- e) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant, if any;
- f) The mitigation measures adopted or being adopted to ensure that such occurrence mentioned in the complaint do not take place again, if any;
- g) Any other information you wish the Office to consider.

8. The Respondent responded to the allegations made against it *vide* a letter received by the Office on 25th June 2025.

D. NATURE OF THE COMPLAINTS

9. The Complainant alleges that the Respondent herein, denied her the right to access her personal data in its custody specifically, the P9 form for the period 2020–2021, which is used for filing annual tax returns for employees in Kenya despite several requests. She reiterates that the Respondent's failure to provide this data has hindered her ability to address a tax compliance issue raised by the Kenya Revenue Authority.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

10. The Complainant alleges that she sought assistance in obtaining her 2021 tax deduction records; p9 form; from the Respondent, her former employer to resolve a tax compliance issue flagged by the Kenya Revenue Authority (KRA) relating to her filings for the years 2020 and 2021.

11. She pleads that despite multiple attempts to engage the Respondent, the 2021 tax records under Outlook Index remain unavailable.

12. On 10th November 2022, her request was escalated by the Human Resources department to the I.T. team to retrieve the records for Outlook Index, however, no response was received.

13. A follow-up email sent on 22nd April 2025, was also not responded to. Furthermore, that subsequent efforts to follow up with Elvis through calls and messages have gone

unanswered, and she remains unable to access the records, thereby risking penalties from KRA due to the Respondent's inaction.

14. In support of her complaint, the Complainant attached the email correspondence between herself and the Respondent.

ii. RESPONDENT'S RESPONSE

15. The Respondent states that during the relevant period, and in the course of the Complainant's employment, all employees had access to the employer-provided payroll system, which enabled them to download payslips and P9 forms at their convenience.

16. The Respondent claims that in 2021, the company changed its payroll system provider, and the data from the previous system, including P9 forms, was not stored in the company's internal database.

17. The Respondent further states that the Complainant failed to download her 2021 P9 form before the system migration occurred, resulting in the unavailability of her data thereafter.

18. The Respondent submits that the Complainant's 2021 P9 form has now been retrieved and shared with her.

19. The Respondent concedes that no lawful basis was relied upon in denying the Complainant access to her personal data. It however pleads that it has instituted measures to store employee data in an internal database to enable easier retrieval in the future.

F. ISSUES FOR DETERMINATION

20. 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 Complainant is entitled to the remedies under the Act and the attendant Regulations.

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

21. Section 2 of the Act defines a data controller as a body which, alone or jointly with others, determines the purpose and means of processing of personal data.
22. The Respondent is an employer who collected and processed the Complainant's personal data in the course of her employment.
23. By dint of the above, the Respondent owed a duty to its employees as its data subjects with whom it collects and processes their personal data to observe and uphold their rights as per the Act.
24. Section 26(b) of the Act provides that data subjects have a right to access their personal data in custody of data controller or data processor.
25. Section 30 of the Act provides for the lawful basis for processing of personal data. Further, Section 30(b) (ii) provides, that a data controller or data processor shall not process personal data, unless the processing is necessary for compliance with any legal obligation to which the controller is subject.
26. Pursuant to the Tax Procedures Act, 2015 and Income Tax Act (Cap 470), the Respondent as a legal person operating under the Kenya Laws is required to remit tax deductions of all its employees annually and keep such records of all income, deductions, and taxes for at least 5 years after the end of the year of income to which they relate.
27. It is not in contention that the Complainant is a former employee of the Respondent. The Respondent has also not challenged the Complainant's position that she left employment in the year 2022, April. As such, the Respondent was still under legal obligation to keep such records of the Complainant of all income, deductions, and taxes for at least 5 years.
28. As a general rule, employers must provide employees with tax deduction information (P9 form) for each year, showing how much tax was deducted and remitted. This is

in line with obligations under the Income Tax Act and the Tax Procedures Act. This means that it was the Respondent's obligation to issue this certificate to the Complainant. Additionally, there exists no legal provision that indicates that this obligation is either negotiated or shared.

29. Pursuant to Regulation 9(3) of the Data Protection (General) Rules, 2021 upon receipt of the initial request from the Complainant for her to access this personal data, it was the duty of the Respondent to ensure that the Complainant's right is upheld. Regulation 9(4) provides that a data controller and processor ought to comply with a request by a data subject to access their personal data within seven days of the of the request.

30. In its response, the Respondent stated and admitted that it did not rely on any lawful basis to deny the Complainant the right to access her personal data in its custody. The Respondent however pleaded that during the period in question, it had changed its payroll system provider, and the data from the previous system, including P9 forms, was not stored in the company's internal database.

31. In light of the above, the Respondent expressly stated that it denied the Complainant the opportunity to exercise her right and access her personal data in custody. Based on the foregoing, this Office finds that the Respondent violated the Complainant's right to access her personal data in its custody as a data controller and processor, as required under Section 26(b) of the Act.

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

32. 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.

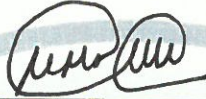
33. As a remedy, the Complainant requested that the Respondent grant her access to the 2021 tax deduction records for Outlook Index or assist her in covering any penalties imposed by KRA due to the unavailability of these records.
34. Section 65(1) of the Act provides, that a person who suffers damage by reason of a contravention of a requirement of this Act is entitled to compensation for that damage from the data controller or the data processor. Section 65(2) provides, a data controller involved in processing of personal data is liable for any damage caused by the processing.
35. Section 65(4) of the Act provides that "damage" includes financial loss and damage not involving financial loss, including distress.
36. Having found that the Respondent failed to uphold the rights of the Complainant as a data subject as envisaged under Section 26(b), and the Respondent as a data controller and processor denied her right to access her personal data in its custody without a lawful basis, it then follows that the Complainant is entitled to compensation. The Respondent is hereby directed to compensate the Complainant **KES 250,000 (Two Hundred and Fifty Thousand Kenya Shillings)**.
37. In so doing, this Office takes into account the nature and extent of violation with regard to unlawful processing of the Complainant's personal data and the conduct of the Respondent.

G. FINAL DETERMINATION

38. In consideration of all the facts of the complaints, the evidence tendered and the investigations conducted, the Data Commissioner makes the following determination:
- i. The Respondent is hereby found liable.
 - ii. The Respondent is ordered to compensate the Complainant **KES 250,000 (Two Hundred and Fifty Thousand Kenya Shillings)**.

- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at NAIROBI this 7th day of August 2025.



**Immaculate Kassait, MBS
DATA COMMISSIONER**

