



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0966 OF 2025

ERICKSON KIPKIRUI LANGAT..... COMPLAINANT

-VERSUS-

AGC TENWEK HOSPITAL..... 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 against the Respondent, alleging that his personal data was misused. He asserts that although he provided his phone number solely for hospital registration and payment of bills, the Respondent went on to send him unsolicited marketing message. The Complainant contends that this amounted to an unlawful repurposing of his personal data for direct marketing without his express 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.

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 2nd July 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations by the Complainant, who was an aggrieved data subject.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondents of the complaint filed against them *vide* a letter dated 15th August 2025 and referenced ODPC/CIE/CON/2/1 (553). In the Notification of the Complaint, the Respondents were informed that if the allegations by the Complainant were true, they were in violation of various provisions of the Act. Further, the Respondents were 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 your response above
 - c. Details on the circumstances under which the Complainant's personal data was used,

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- d. Any contractual or other form of agreement with the Complainant authorizing the use of his personal data for direct marketing if any;
 - e. Proof of consent or other form of agreement with the Complainant authorizing the use of his personal data for direct marketing,
 - 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 they wish the Office to consider.
8. The Respondent was non-responsive and did not submit a response to the Notification of Complaint. Regulation 11(2) of the Data Protection (Complaints Handling and Enforcement Procedures) Regulations, 2021 states that, *"where a respondent does not take any action as contemplated in the notification of complaint, the Data Commissioner shall proceed to determine the complaint in accordance with the Act and the Enforcement Regulations."*
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. The complaint concerns the alleged misuse of the Complainant's personal data by the Respondent. The Complainant avers that although he provided his phone number exclusively for hospital registration and payment of bills, the Respondent subsequently used the same number to send unsolicited marketing message. The Complainant maintains that this amounted to a repurposing of his personal data beyond the scope of the initial purpose.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant contends that the Respondent sent him a marketing message yet he had given out his number for registration and payment of hospital bills.

12. He maintains that the hospital went beyond the scope of the initial purpose for which his number was collected and unlawfully repurposed it for direct marketing without first obtaining his express consent.

ii. THE RESPONDENTS' RESPONSE

13. The Respondent was non-responsive and did not submit a response to the Notification of Complaint. Therefore, the allegations made in the Complaint remain undisputed.

F. ISSUES FOR DETERMINATION

14. It is not controverted that the Respondent continued to use the Complainant's personal information beyond the purpose for which it was initially provided.

15. 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 Respondent fulfilled its obligation under the Act.
- 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

16. Section 26(a) of the Data Protection Act expressly provides that "*a data subject has a right to be informed of the use to which their personal data is to be put.*"

17. The Complainant asserts that he furnished his phone number solely for purposes of registration and payment of hospital bills. The subsequent use of that number to send him marketing message, without prior notice or disclosure, amounted to processing for a new purpose of which he had not been informed. This omission deprived the Complainant of his statutory right to be informed under Section 26(a) of the Act.

18. Therefore, the Respondent's continued processing of the Complainant's personal data for marketing purposes, without informing him of such intended

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use, amounts to an infringement of the Complainant's right under Section 26(a) of the Act.

II. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT

19. Section 25(c) of the Act requires that personal data be collected for explicit, specified, and legitimate purposes and not further processed in a manner incompatible with those purposes. By diverting the Complainant's phone number from its original billing purpose to marketing communications, the Respondent engaged in processing incompatible with the initial purpose thereby breaching the principle of purpose limitation.
20. Section 30 of the Act provides that all processing of personal data must be based on a lawful ground, such as consent, contractual necessity, or compliance with a legal obligation. In this context the most relevant lawful ground would be the data subject's explicit consent. No evidence has been provided to show that such consent was obtained from the Complainant.
21. Section 32 of the Act further reinforces that, where consent is relied upon, it must be freely given, specific, informed, and unambiguous, with the burden of proof resting on the data controller. The Respondent has not demonstrated that the Complainant consented to the receipt of marketing messages and as such this requirement remains unfulfilled.
22. Additionally, Section 37(1) of the Act, read together with Regulation 14 of the Data Protection (General) Regulations 2021, explicitly prohibits the use of personal data for commercial purposes unless based on consent. Regulation 14(1)(c) expressly identifies that sending an electronic message to a data subject about a sale or other advertising material constitutes commercial use. The Respondent's conduct falls within this definition.
23. In conclusion, The Respondent's actions amounted to unlawful processing of the Complainant's personal data. Specifically, the Respondent breached the principles of purpose limitation under Section 25(c), failed to demonstrate a lawful basis under Section 30, did not meet the requirements of consent under

Section 32, and engaged in commercial use of personal data contrary to Section 37 of the Act and Regulation 14 of the General Regulations.

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

24. 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.

25. The Complainant prays for compensation from the Respondent for failing to honour his right to be informed, particularly for the distress and inconvenience caused by the unauthorized use of his personal data for direct marketing without his knowledge or consent.

26. With regards to the award of compensation, Section 65 of the Act provides for compensation to data subjects and states, *"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."* Section 65(4) of the Act states that, *"damage includes financial loss and damage not involving financial loss, including distress."*

27. Further, Regulation 14(3)(e) provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent. In considering whether to issue compensation, this Office takes into consideration the fact that the Respondents violated the Complainant right to be informed under section 26 (a).

28. The Respondent is hereby found liable for processing the Complainant's personal data for purposes beyond the initial reason for which it was collected, namely registration and payment of hospital bills without the Complainant's knowledge or consent. The Office hereby orders the Respondent to pay the Complainant **Kenya Shillings Two Hundred and Fifty Thousand (KES. 250,000/=)** as compensation.

29. Having found that the Respondent failed to fulfill its obligations under the Act and attendant regulations, **an Enforcement Notice shall issue against the**

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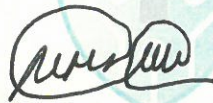
Respondent pursuant to Section 58 of the Act and Regulation 16 of the Enforcement Regulations to compel the Respondent to erase all data relating to the Complainant and furnish proof of the same.

G. FINAL DETERMINATION

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

- i. The Respondent is hereby found liable.
- ii. The Respondent is hereby ordered to pay the Complainant **Kenya Shillings Two Hundred and Fifty thousand (KES. 250,000/=)** as compensation;
- iii. An **enforcement notice** to hereby be issued to the Respondent.
- iv. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 29th day of September 2025.



**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**

KENYA

