



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0778 OF 2025

CHRISPUS HEDRICK NAMUYE.....COMPLAINANT

-VERSUS-

BLISS PARK HOTEL.....RESPONDENT

DETERMINATION

(Pursuant to Section 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. This Complaint is in respect of the Complainant's claim that the Respondent unlawfully published copies of his national ID, which included his name, national ID and phone number on various social media platform.

B. LEGAL BASIS

2. The Constitution of Kenya 2010, under Article 31 (c) and (d) 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 (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 pegged 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 29th May 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 (hereinafter the 'Enforcement Regulations') from the Complainant who is the aggrieved data subject.
7. Pursuant to Regulation 11 of the Enforcement Regulations, this Office notified the Respondent of the complaint filed against it *via* a letter dated 11th June 2025, referenced ODPC/CIE/CON/2/1 (415) and required their response within 21 days.
8. The Respondent responded to the notifications of the complaint *via* a letter dated 25th July 2025.
9. This determination is therefore as a result of analysis of the complaint as received and the response from the Respondent.

D. NATURE OF THE COMPLAINT

10. The Complainant alleges that the Respondent unlawfully published copies of his national ID, which included his name, national ID and phone number on various social media platforms.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANTS' CASE

11. The Complainant contended that on 1st January 2025, the Complainant visited Bliss Park Hotel with a friend for dinner, where the total bill amounted to KES 3,450. Owing to a technical issue with his mobile banking application, the complainant was unable to settle the bill on the same day. The Complainant stated that the matter was communicated to the hotel's Operations Manager, who agreed to retain the complainant's National ID and Driving License as security until the following day.
12. That on 2nd January, 2025, he was unable to make payment due to an emergency involving the admission of his grandmother to Hospital, which required urgent travel to Kisumu. During this period, the complainant remained offline and was unable to respond to the hotel's attempts to reach him.
13. The hotel thereafter uploaded copies of the complainant's National ID, containing his full name, ID number, and phone number, on various social media platforms, falsely branding the complainant as a fraudster. The complainant alleged that the posts were circulated in Facebook groups such as Busia County Youth Agenda, Samia Daily News, and Bunge la Busia County, which caused significant.
14. He further stated that although he settled the outstanding bill in full on 5th January, 2025, the respondent declined to remove the defamatory posts or issue an apology. The complainant also alleged that the hotel continued to threaten him through persistent phone calls and WhatsApp messages despite payment having been made.

15. To support his complaint, the Complainant adduced the impugned images of the posts made by the Respondent.

ii. THE RESPONDENT'S RESPONSE

16. In its response, the Respondent stated that the Complainant visited their premises for New Year celebrations but was unable to settle his bill, prompting him to request that his National ID be held as security until payment was made.

17. That, it was agreed that if the bill was not settled by the close of business on 2nd January 2025, the Respondent would be at liberty to post the Complainant's name, phone number, and ID on Facebook groups within the region to help trace him.

18. The Respondent contended that afterwards, the Complainant failed to answer calls or communicate on 2nd January 2025, and as per the agreement, the Facebook posts were made on 4th January 2025.

19. That once the complainant cleared the outstanding bill on 5th January 2025, the posts were immediately taken down.

F. ISSUES FOR DETERMINATION

20. The following issues fall for determination by this Office:

- i. Whether the Respondent obtained express consent from the Complainant to process his personal data; and
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THE RESPONDENT OBTAINED EXPRESS CONSENT FROM THE COMPLAINANT TO PROCESS HIS PERSONAL DATA

21. It was the complainant's position that the Respondent unlawfully published copies of his national ID, which included his name, national ID and phone number on various social media platforms.

22. It was the Respondent's position that the Claimant consented to the public disclosure of his personal data (name, phone number, and ID) should he fail to clear the bill by 2nd January, 2025

23. Section 30 (1) (a) of the Act provides that a data controller or data processor shall not process personal data unless the data subject consents to the processing for one or more specified purposes.

24. The Act goes further to state the conditions of consent. It states as follows with regard to the conditions of consent:-

32. Conditions of consent

(1) A data controller or data processor shall bear the burden of proof for establishing a data subject's consent to the processing of their personal data for a specified purpose.

(2) Unless otherwise provided under this Act, a data subject shall have the right to withdraw consent at any time.

(3) the withdrawal of consent under sub-section(2) shall not affect the lawfulness of processing based on prior consent before its withdrawal.

(4) In determining whether consent was freely given, account shall be taken of whether, among others, the performance of a contract, including the provision of a service, is conditional on the consent of the processing of personal data that is not necessary for the performance of that contract.

25. Regulation 4 of the Data Protection (General) Regulations, 2021 further provides that ;

"(4) Pursuant to section 32(4) of the Act, consent shall be considered to have been given freely, unless where:-

(a) It is presumed on the basis that the data subject did not object to a proposal to processing of their personal data in a particular manner;

(b) It is presented as a non-negotiable part of the terms and conditions for processing;

- (c) The data subject is unable to refuse or withdraw their consent without detriment;*
- (d) The data controller or data processor merges several purposes for processing without seeking specific consent for each purpose; or*
- (e) The intention of the data subject is ambiguous.*

26. From the complaint at hand, we note the Complainant was compelled to give his consent to the public disclosure of his personal data as he was not able to pay his bill. His consent was not freely given; it was given under duress.

27. Further, the said consent in which the Respondent relied to publish the Complainant's personal media, was not express.

28. Section 2 of the Act defines consent as any manifestation of express, unequivocal, free, specific, and informed indication of the data subject's wishes by a statement or by a clear affirmative action, signifying agreement to the processing of personal data.

29. The definition of the Act details the minimum criteria for consent to be that it must be certain that the individual has consented, and what they have consented to.

30. The Respondent did not demonstrate that they issued a written notice or properly explained the risks of disseminating personal data on public forums.

31. It is therefore this Office's finding that while the Respondent claims reliance on consent, the circumstances suggest that the consent was neither informed nor freely given, and the processing failed to meet the statutory obligations of transparency, proportionality, and lawful purpose under the Act.

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

32. Under 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. Having considered the merits of the Complaint, the evidence adduced by the Complainants and the Respondent, and having found that the Respondent processed the Complainant's personal data without consent, it therefore, follows that there has been a violation of the Act by the Respondent to that extent. The Respondent did not process the Complainant's personal data in accordance with Sections 30 (1) (a) and 32 (1) of the Act.
34. Section 65 (1) of the Act provides for compensation to a data subject 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. Section 65 (4) of the Act states that "damage" includes financial loss and damage not involving financial loss, including distress.
35. Regulation 14 (3) (e) of the Enforcement Regulations further provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.
36. Despite the finding that the Respondent processed the Complainants' personal data without obtaining their consent, the Office declines the issuance of an award of compensation based on the circumstances of the case.

G. FINAL DETERMINATION

37. In the ultimate, the Data Commissioner therefore makes the following final determination;
- i. The Respondent is hereby found liable.

- ii. The Respondent is hereby ordered to delete and or pull down the posts containing the Complainant's personal data from all its platforms and provide proof thereof to this Office within fourteen (14) days from the date of this determination.
- iii. Failure to adhere to (ii) above, an Enforcement Notice shall hereby be issued.
- iv. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 26th day of August 2025.

