



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1274 OF 2025

ISLIM SHIKUNYI IMRAN..... COMPLAINANT

-VERSUS-

EVEREST PARK ESTATE.....1ST RESPONDENT

EVEREST PARK MANAGEMENT LTD.....2ND RESPONDENT

EVEREST PARK RESIDENTS' ASSOCIATION MAVOKO.....3RD 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 Complainants lodged against the Respondents alleging that the Respondents' CCTV were installed in a manner that cameras at the gate were installed to enhance security, but failed to register as a data controller or processor, and did not notify residents or provide information regarding the data retention policies.

B. LEGAL BASIS

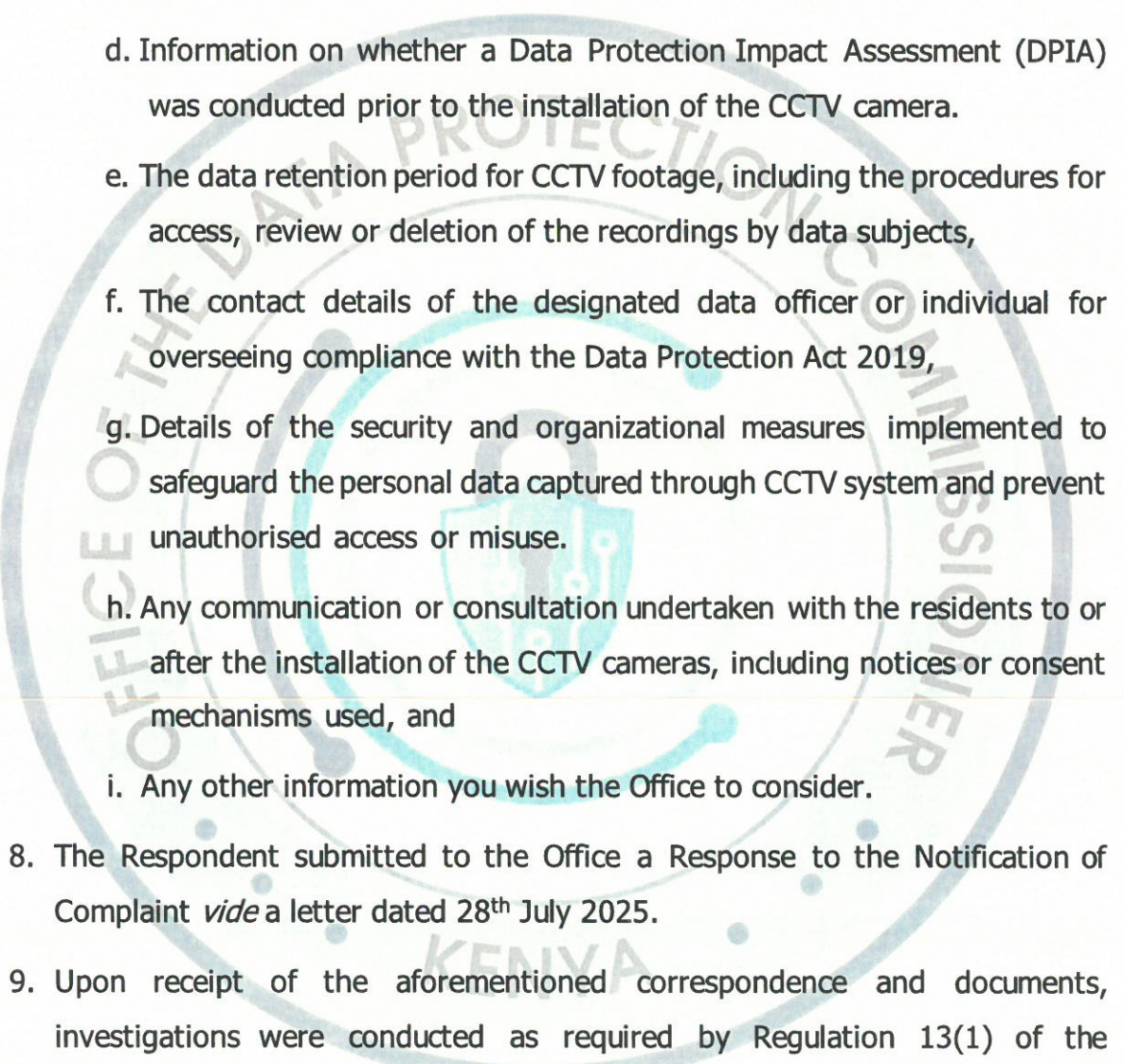
2. Article 31(c) and (d) of the Constitution of Kenya provides for the right to privacy. Consequently, as an effort to further guarantee the same, the Data Protection Act, 2019 (hereinafter known as 'the Act') was enacted.
3. The Office of the Data Protection Commissioner (hereinafter as 'this Office' 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 29th August 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 9th October, 2025 and referenced ODPC/CIE/CON/2/1(749) ODPC/CIE/CON/2/1 (750) and ODPC/CIE/CON/2/1 (751). 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;

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- b. Any relevant materials or evidence in support of your response, including policies or procedures relating to the installation, monitoring and management of CCTV camera.
- c. Details of the purpose for which the CCTV cameras were installed and the lawful basis relied upon for collecting and processing personal data through the surveillance system.
- d. Information on whether a Data Protection Impact Assessment (DPIA) was conducted prior to the installation of the CCTV camera.
- e. The data retention period for CCTV footage, including the procedures for access, review or deletion of the recordings by data subjects,
- f. The contact details of the designated data officer or individual for overseeing compliance with the Data Protection Act 2019,
- g. Details of the security and organizational measures implemented to safeguard the personal data captured through CCTV system and prevent unauthorised access or misuse.
- h. Any communication or consultation undertaken with the residents to or after the installation of the CCTV cameras, including notices or consent mechanisms used, and
- i. Any other information you wish the Office to consider.
8. The Respondent submitted to the Office a Response to the Notification of Complaint *vide* a letter dated 28th July 2025.
9. Upon receipt of the aforementioned correspondence and documents, investigations were conducted as required by Regulation 13(1) of the Complaints Handling Procedures, 2021.
10. 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

11. The Complaint stems from allegations by the Complainants that the Respondents the Respondents' CCTV were installed in a manner that cameras

at the gate were installed to enhance security, but failed to register as a data controller or processor, and did not notify residents or provide information regarding the data retention policies.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

12. The Complainant avers that officials of the estate proceeded to install CCTV cameras at the main gate purportedly to enhance security, yet the installation was undertaken without consulting all residents and without complying with the requirements of the Data Protection Act, 2019.
13. He further states that, at the time of installation he expressly advised the officials on the need to comply with the Act, including developing the requisite data protection policies and registering as a data controller or appointing a data protection officer as required by law. However, despite these advisories the installation was undertaken without the participation of all residents, noting that the estate comprises approximately 440 housing units of different typologies.
14. The Complainant contends that the Respondent has not provided residents with the mandatory information relating to the CCTV system, such as the contact details of the data protection officer, the identity of the persons monitoring the cameras, the applicable data retention period, or the procedures for requesting access to or deletion of footage.
15. He additionally notes that, despite the existing compliance concerns, the officials intend to install additional cameras around the driveways and parking areas without first addressing the data protection gaps already raised.
16. The Complainant sought the for the immediate cessation of operating the cameras as a remedy.

ii. 1ST RESPONDENT'S RESPONSE

17. The 1st Respondent did not respond to the Notification of Complaint.

iii. 2ND RESPONDENTS RESPONSE

18. The 1st Respondent submitted its response to the Notification of Complaint letter on 18th November, 2025 and stated that it is not related to the other two Respondents, nor is it subject to their direction, control, or management.

iv. 3RD RESPONDENTS RESPONSE

19. The 3rd Respondent explains that the CCTV system referenced in the Complaint was conceived, funded, and implemented as a homeowner-driven initiative, collectively owned by the homeowners within the estate. Accordingly, it asserts that any matters relating to data control, data processing, or operation of the system fall under the purview of the homeowners' collective rather than the Respondent.

20. The 3rd Respondent further states that the CCTV cameras were installed only in the common areas of the estate specifically at publicly accessible entry points and internal roadways where in its view there is no reasonable expectation of privacy. It additionally notes that signage has been placed at the estate entrance to notify all persons that CCTV surveillance is in operation.

21. They submit that installation of the CCTV system followed a community participation process in which homeowners discussed, approved, and financially contributed to the project. It maintains that the system was installed solely to enhance security and deter criminal activity within the estate.

22. According to the 3rd Respondent, information relating to the data retention period, access procedures, technical and organizational security measures, and the designated responsible individual is held by the homeowners' collective managing the system. It further states that it is willing to facilitate the provision of such information to the Office, where appropriate.

23. The 3rd Respondent clarifies that it did not have an obligation to conduct a Data Protection Impact Assessment (DPIA), given that it is neither the owner nor the operator of the CCTV system and does not process any data generated from it. It adds that the Complainant has previously engaged with the homeowners'

committee responsible for the system and is therefore aware of its structure and management.

24. The Respondent notes that any concerns relating to access to footage or internal security protocols should be directed to the homeowners' collective, emphasizing that disclosure of such protocols to individual residents requires appropriate authorization.

25. Finally, the Respondent affirms that there is no evidence of any compromise of residents' personal data arising from the CCTV system and maintains that the system has been implemented for legitimate security purposes within the estate.

v. THE COMPLAINANTS' REJOINDER

26. The Complainant maintains that the Respondent failed to provide any documentation demonstrating lawful authority, governance structures, or compliance processes relating to the installation and operation of the CCTV cameras, despite having indicated that such information could be furnished to the Office upon request.

27. He further contends that the Respondent's assertions regarding community participation, committee involvement, and his alleged engagement in the decision-making process are unsubstantiated. In his view, these claims misrepresent the factual circumstances and serve only to divert attention from the Respondent's ongoing non-compliance with the Data Protection Act.

28. The Complainant additionally states that the Respondent did not adequately address the concerns raised concerning the recording of minors and other residents within the gated community, nor did it demonstrate the existence of safeguards, policies, or procedures governing the processing, retention, access, or deletion of CCTV footage.

29. He further asserts that the Respondent's allegations impugning his character including insinuations of ill motives or being a potential security risk are false, baseless, and intended to intimidate him. Moreover, he emphasizes that the Respondent failed to substantively respond to the compliance issues highlighted both in his initial complaint and in the Office's notification.

F. ISSUES FOR DETERMINATION

30. The Complaint concerns the alleged unlawful installation and positioning of CCTV cameras by the Respondents.
31. In light of the above, the following issues fall for determination by this Office:
- i. Whether there was lawful processing of personal data by installation of the CCTV systems within the estate.
 - ii. Whether the Complainant is entitled to any remedy under the Act.

I. WHETHER THERE WAS LAWFUL PROCESSING OF PERSONAL DATA BY INSTALLATION OF THE CCTV SYSTEMS WITHIN THE ESTATE.

32. The 2nd Respondent maintained that it is not connected to the CCTV initiative and has no role in its installation, ownership, or operation. No evidence was presented to contradict this. It therefore bears no obligations under the Act in respect of this matter.
33. The 3rd Respondent, by coordinating the installation, determining the location of the cameras, and managing access to the footage, qualifies as the data controller within the meaning of Section 2 of the Act. Accordingly, compliance obligations under the Act rest with the 3rd Respondent and the homeowners' committee running the system.
34. Section 25 of the Act provides that every data controller or data processor shall ensure that personal data is:
- (a) processed in accordance with the right to privacy of the data subject;
 - (b) processed lawfully, fairly and in a transparent manner in relation to any data subject;
 - (c) collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes.
35. During the site visit investigation, it was established that four cameras had been installed at the main gate, where signage indicating 24-hour CCTV surveillance was displayed, and one at the water point to curb vandalism. The cameras operate with a ten-day retention period, and access to footage is granted only upon written

request to the committee, under supervision, and in accordance with an established CCTV access policy which is in line with the Principles of the Data Protection Act under section 25.

36. Similarly, Section 30(1)(b)(vii) provides that every data controller or data processor shall not process personal data unless the processing is necessary for the legitimate interests pursued by the data controller or data processor by a third party to whom the data is disclosed, except if the processing is unwarranted in any particular case having regard to the harm and prejudice to the rights and freedoms or legitimate interests of the data subject.
37. The 3rd Respondent demonstrated that through public participation process involving homeowners and residents, who also contributed financially to improve security and curb theft and vandalism of water pipes. The cameras are located only at the main gate and the water point while none are installed within residents' private homes thereby establishing the legitimate interest as a lawful basis of processing.
38. The Office therefore finds that the use of CCTV cameras within the context of this complaint had a lawful basis of processing personal data.

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

39. 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.
40. The Office has carefully considered the merits of the Complaint, the submissions and evidence provided by both parties, and the findings from the site visit conducted by the Office.
41. While the investigation identified gaps in full compliance with certain data protection principles particularly transparency and demonstrable compliance there was no evidence of unlawful processing, misuse of personal data, or harm occasioned to the Complainant as a result of the CCTV installation or operation.

The documented safeguards, coupled with the legitimate security purpose, demonstrate substantial operational compliance.

42. Accordingly, the Office finds that the Complaint does not disclose any contravention of the Data Protection Act or its attendant Regulations, and therefore does not merit any further action.

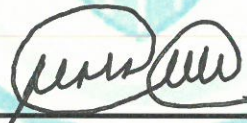
43. However, in line with the Office's mandate under Section 8 of the Data Protection Act to promote compliance, the 2nd and 3rd Respondent is hereby directed to comply with the Act by Registration with the Office of the Data Protection Commissioner as a data handler.

G. FINAL DETERMINATION

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

- i. The Complaint is hereby dismissed.
- ii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 27th day of November 2025.



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER

