



OFFICE OF THE DATA PROTECTION COMMISSIONER
ODPC COMPLAINT NO. 1125 OF 2025

ANDREW ALSTON.....COMPLAINANT
-VERSUS-
LIQUID TELECOMMUNICATIONS KENYA LTD.....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 alleging that the Respondent recorded his personal data without consent and processed it further, in violation of the principle of purpose limitation. The Complainant further stated that the Respondent failed to fulfil his right of erasure.

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

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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 5th August, 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondent of the complaint filed against it *vide* letter issued on 27th August, 2025. The notification letter was referenced ODPC/CIE/CON/2/1 (572). The Office in the said Notification of Complaint requested the Respondent to furnish the Office with –
 - a) A response to the allegations made against it by the Complainant;
 - b) A contact person who can provide further details as regards the complaint;
 - c) Any relevant materials or evidence in support of its response above;
 - d) Evidence as to whether the Complainant consented to the recording of his personal data;
 - e) The lawful basis relied upon to process the Complainant's personal data;
 - f) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant; and
 - g) Any other information it wished the Office to consider.

8. In the interest of fair justice, and pursuant to Regulation 11 of the Data Protection (Complaints Handling Procedures and Enforcement) Regulations, 2021, the Office further informed the Respondent of the options of -
 - a. Reviewing the complaint and summarily resolving the same to the satisfaction of the Complainant, or
 - b. Resolving the complaint through mediation, negotiation and/or conciliation, as the alternative dispute resolution (ADR) mechanisms provided for by the Act and the Regulations.
9. The Respondent responded to the notification letter *vide* a letter dated 22nd September, 2025.

D. NATURE OF THE COMPLAINT

10. The Complaint concerns the Complainant's allegations that the Respondent recorded his personal data without consent, processed it further in violation of the principle of purpose limitation and failed to fulfil his right to be informed and his right of erasure.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant states that he held a consultation call between himself and HR representatives of the Respondent. He avers that the call was heated - and a lot of things were said. He states that primary to the complaint though is the fact that on the call he explicitly did not consent to the recording of the call and was told explicitly that the call recording would be deleted directly following the call as a result of his lack of consent.
12. The Complainant contends that in an arbitration in South Africa against Liquid Telecommunications-Mauritius over another matter, Liquid Kenya produced that recording as part of their evidence, misconstruing what was said on the recording.
13. The Complainant avers that at minute 9 of the call he explicitly stated that he did not consent to the recording and asked for a commitment to delete the recording.
14. The Complainant attached the following documents in support of his complaint:

- The recording in contention as obtained from arbitration.
- Objection to recordings admissibility in the arbitration.
- Email correspondences in support of the case.

ii. THE RESPONDENT'S RESPONSE

15. The Respondent stated that the Complainant was employed full-time by the Respondent which resulted in his relocation to Kenya in 2013 and that the Complainant was retrenched in the year 2024.
16. Following the retrenchment, the Respondent states that a virtual consultation call ("the Call") was convened between the Complainant, a representative of Liquid Kenya HR and London based head of HR for the Liquid Group. The call was recorded by the HR representative and the Complainant indicated that he had not consented to the recording. Subsequently, he requested for the recording to be deleted and the HR representative acknowledged the request and confirmed it will be deleted.
17. The Respondent posited that the recording of the Call was however securely retained and its processing restricted for evidentiary purposes in the arbitration proceedings which had at that time been threatened by the Complainant against Liquid Mauritius. The recording of the call was specifically retained to document, for possible evidentiary purposes, certain proposals/ threats that the Complainant had made to/against Liquid Kenya during the Call.
18. According to the Respondent, the Complainant subsequently commenced international arbitration proceedings against Liquid Mauritius. The recording of the Call, including a transcript of the recording was included by Liquid Mauritius in the documents presented during the discovery process before the arbitration hearing. The Complainant notified the arbitrator and Liquid Mauritius of his intention to challenge the inclusion of the Call in evidence and also filed the complaint before this Office.
19. The Respondent states that Liquid Mauritius then assessed its position in the arbitration and made a strategic decision before the commencement of the hearing to withdraw the recording as well as the transcript. They state that the stated that

he had not reviewed/read the transcript as he did not want to 'color his mind' with its contents before determining its admissibility.

20. In response to the allegation of processing without a lawful basis/consent and violating the principle of purpose limitation, the Respondent submits that the call was processed on the basis of necessity for purposes of the legitimate interests pursued by the data controller as it was done to preserve the Call for evidentiary purposes. As such they relied on Section 30(1)(b)(vii) on legitimate interest and did not require consent.
21. The Respondent avers that the legitimate interest in this case was to preserve an objective and verifiable account of the matters discussed; and to ensure that any future proceedings, internal or external, would support the Respondent's constitutional right to a fair hearing and an impartial determination of the dispute between itself (or its sister company in the Liquid Group) and the Complainant.
22. The Respondent stated that they hold the reasonable belief that the recording of the Call was not only necessary for such purposes but also did/does no harm or prejudice to the rights and freedoms or legitimate interests of the Complainant.
23. On the basis above, the Respondent maintains that the recording of the call was lawful, fair and justified, and that the Complainant's allegation of lack of consent does not invalidate the processing in question.
24. On the right to erasure, the Respondent submits that it indeed retained the recording of the Call despite the Complainant's request for its deletion and an initial indication by one of its HR representatives that the same would be deleted but maintains that the retention was both lawful and justified as per General Regulations 12(4)(e).
25. As regards Section 40(3) of the Act, on informing the data subject when the right of erasure has been declined within a reasonable time, the Respondent maintains that the notice of the decision to retain the call for evidentiary purposes was provided within a reasonable time. Liquid Kenya is of the view that, in this case, where adversarial arbitral proceedings in which the recording could possibly have been used were threatened by the Complainant, the notification of the non-erasure

and restricting of the processing for evidentiary purposes made during the discovery process prior to the hearing in the arbitration proceedings sufficiently met the requirements of a reasonable notice under the circumstances.

26. On remedies, the Respondent submits that while it had demonstrable lawful bases for recording and retaining the Call, Liquid Mauritius ultimately elected not to introduce or rely on the recording in any manner during the call.

27. Under Section 65(1) of the Act on compensation, the Respondent maintains that no damage whether pecuniary, reputational or otherwise was suffered by the Complainant since the recording was not deployed in the arbitration by Liquid Mauritius and there was no contravention under the Act by them. Therefore, they state that the Complainant is not entitled to any of the reliefs sought and the complaint should be dismissed.

28. The Respondent provided the following appendices to support their response;

- a) A copy of the notification of the Complaint
- b) A copy of the transcript from the arbitration proceedings reflecting the arbitrator's indication that he had not reviewed the transcript of the Call.

iii. The Complainant's Rejoinder

29. Upon being served with the Respondent's response, the Complainant filed a rejoinder on 6th October, 2025. He stated that the Respondent was never subject to arbitration nor were they threatened with arbitration. The arbitration case was between Liquid Telecommunications Mauritius and himself. The recording however was retained by Liquid Kenya and further distributed outside of the borders to the wider Liquid Group. The Respondent, Liquid Kenya, not being subject to arbitration or any legal action at the time the recording and the commitment were made, therefore, had no right to claim they retained the call on the basis of retention of evidence.

30. He stated that the subject of the recording had absolutely no relevance to the arbitration between Liquid Telecommunications Mauritius and himself. The subject of the recording dealt exclusively with work visa related issues in Kenya. The

arbitration proceedings with Liquid Telecommunications Mauritius were a contractual issue as regards a contract between himself and Liquid Telecommunications Mauritius.

31. The Complainant took the position that the very fact that Liquid Mauritius's council [sic] not only chose to withdraw the evidence before the hearing, but also to contact his attorney's asking if they would withdraw the complaint before this Office if they agreed to withdraw the evidence, shows in his view, that the retained recording had no evidentiary value in the first place. He states that not once in that recording was anything to do with the arbitration ever referred to.
32. It was the Complainant's averment that the Respondent was well aware of the fact that the arbitration concerned a contractual dispute in a contract that they themselves admitted existed. He reiterates that the recording had no relation whatsoever to that arbitration.
33. According to the Respondent, had that call been related to the arbitration, it would have served as part of a no-prejudice discussion, thereby making it inadmissible in the first instance and as such, the Respondent had no legitimate reason to keep the recording.
34. The Complainant states that the Respondent claim that no damage was done as a result of their retention and submission of this recording is factually inaccurate. Before the Respondent decided to withdraw the evidence, the Complainant posits that he had no option but to object to the admissibility of the evidence. This incurred substantial legal costs in the amount of close to \$5,000.
35. While it is true that the Respondent withdrew the recording following his objection to its admissibility the Complainant claims that they still retained references to the content of the recording in witness statements that were submitted to the tribunal. According to the Complainant, the fact that they chose in the end to not call any witnesses is immaterial, since yet again, they were then in a position where they had to prepare responses to their witness statements, again, incurring substantial legal costs.

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36. In summary the Complainant denies that the Respondent, Liquid Kenya, was ever threatened with, or subject of, arbitration. He admits that an arbitration proceeding occurred between Liquid Mauritius and the Complainant. However, he denied that the contents of the recording had any relation to that arbitration, and even if it did, it would not have been admissible under the no prejudice rule. The commitment to delete the recording was given by a Liquid Kenya member of staff and was not honoured. As a result, the Complainant incurred substantial legal costs directly as a result of them retaining this call in preparing to have it quashed as evidence. As such, the Complainant believes he is entitled to compensation in this regard.

37. On the Respondent's position that the Act requires notification that recordings will not be erased within a reasonable time frame, the Complainant states that the first time he became aware that this recording had been retained was more than a year later when an attempt was made to submit it into evidence in a case that the Respondent, Liquid Telecom Kenya, was not a party to. According to him, this hardly qualifies as a reasonable time period.

F. ISSUES FOR DETERMINATION

38. As a preliminary issue, this Office will consider whether the Call recording, the subject of this complaint, is personal data as defined in the Act.

39. Section 2 of the Act defines personal data as any information relating to an identified or identifiable natural person. An identifiable natural person is defined as a person that can be identified, directly or indirectly, by reference to one or more identifiers, including factors specific to their physiology.

40. Biometric data is defined as personal data resulting from specific technical processing based on, *inter alia*, physical, physiological or behavioral characterizations, including voice recognition.

41. A call recording inherently contains the voice of the person speaking which is a biometric and physiological identifier. It is thus personal data that falls within this Office's mandate.

42. Having said that, the following issues therefore fall for determination by this Office:

- i. Whether the Respondent fulfilled its obligations in accordance with the Act and the attendant Regulations;
- ii. Whether there was a violation of the Complainant's data protection rights under the Act; and
- iii. Whether the Complainant is entitled to any remedies under the Act.

I. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS IN ACCORDANCE WITH THE ACT AND THE ATTENDANT REGULATIONS.

43. In considering this issue, the Office will address itself to the following questions –

- a. *Did the Respondent fulfill their duty to notify?*
- b. *Did the Respondent establish a lawful basis for processing the Complainant's personal data?*
- c. *Did the Respondent process the Complainant's personal data in accordance with the principle of purpose limitation?*

Did the Respondent fulfill their duty to notify?

44. Sections 29 (b), (c), (d) and (f) of the Act states that a data controller or data processor shall, before collecting personal data, in so far as practicable, inform the data subject of –

- a) the fact that personal data is being collected,
- b) the purpose for which it is being collected,
- c) the third parties whose personal data has been or will be transferred to, including details of safeguards adopted; and
- d) a description of the technical and organizational security measures taken to ensure the integrity and confidentiality of the data.

45. The duty to notify is a core transparency obligation that ensures data subjects are informed, at or before the point of data collection, about what happens to their data, why, and by whom. It underpins informed consent, fairness, and the ability to exercise data rights.

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46. The Respondent stated that an automated notice of the recording was automatically generated at the beginning of the Call to notify the participants that the Call was being recorded.

47. However, this does not fulfil the duty to notify as no evidence was adduced to demonstrate that all elements set out in Section 29 outlined above were met. The Complainant was not informed of the purpose for which the data was being collected, the third parties to whom his personal data has or will be transferred to, including details of safeguards adopted and neither was a description of the technical and organizational security measures taken to ensure the integrity and confidentiality of the data provided.

48. This Office therefore finds that the Respondent failed to fulfil the duty to notify.

Did the Respondent establish a lawful basis for processing the Complainant's personal data?

49. It was the Complainant's position that he did not consent to the processing of his personal data. Conversely, the Respondent stated that they relied on legitimate interest to process the Complainant's personal data.

50. 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 or the processing is necessary for the purposes set out in Section 30 (1)(b) of the Act.

51. When relying on legitimate interest, Section 30 (1) (b)(vii) of the Act is instructive to the effect that a data controller or data processor may process personal data if 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.

52. In addition, Regulation 29 (a), (b) & (c) of the Data Protection (General) Regulations, 2021 set out the elements necessary to implement the principle of lawfulness to include appropriate legal basis or legitimate interest clearly connected to the specific purpose of processing, processing that is necessary for

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the purpose, and the data subject being granted the highest degree of autonomy possible with respect to control over their personal data.

53. In this context, the Respondent states that their legitimate interest was for purposes of preserving the Call for evidentiary purposes and to provide an objective and verifiable account of the matters discussed, to ensure that any future proceedings, internal or external, would support the Respondent's constitutional right to a fair hearing and an impartial determination of the dispute between itself (or its sister company in the Liquid Group) and the Complainant.
54. Whereas the recording may have been required to protect the Respondent's legal position in potential litigation, this purpose ought to have been informed to the Complainant prior, and applied specifically to the Respondent (Liquid Kenya).
55. Further, the purported legitimate interest fails the necessity test to the extent that there were other less intrusive means of achieving the same purpose, that is evidence for purpose of litigation, such as written confirmation or minutes of the meeting. This is confirmed by Liquid Mauritius withdrawal of the Call as evidence in the arbitration proceedings.
56. The call recording caused harm and prejudice to the Complainant in the context in which it was used. The Call containing his personal data was processed by the Respondent, Liquid Kenya, without his knowledge and consent, and shared with Liquid Mauritius in arbitration proceedings against him. As a result of the processing, the Complainant was placed in a position where he had to object to the processing and defend the admissibility of the Call at his own cost.
57. Notably, no evidence was adduced to demonstrate the nexus between Liquid Kenya and Liquid Mauritius and the basis for personal data transfer between the two entities, outside Kenya, and noting that the Complainant was neither informed of the transfer nor did he authorize the same.
58. In this context, the scales of justice tilt in favour of the Complainant's expectation of privacy in his communication, especially since he was not properly informed that the call will be recorded for that specific purpose.

59. This Office therefore finds that the Respondent did not have a lawful basis to process the Complainant's personal data.

Did the Respondent process the Complainant's personal data in accordance with the principle of purpose limitation?

60. Pursuant to Section 25 (c) of the Act, every data controller or data processor shall ensure that personal data is, *inter alia*, collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes.

61. The elements necessary to implement the principle of purpose limitation are set out in Regulation 31 of the Data Protection (General) Regulations, 2021 to include

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- a) *specifying the purpose for each processing of personal data;*
- b) *determining the legitimate purposes for the processing of personal data before designing organisational measures and safeguards;*
- c) *the purpose for the processing being the determinant for personal data collected;*
- d) *ensuring a new purpose is compatible with the original purpose for which the data was collected;*
- e) *regularly reviewing whether the processing is necessary for the purposes for which the data was collected and test the design against purpose limitation; and*
- f) *use of technical measures, including hashing and cryptography, to limit the possibility of repurposing personal data.*

62. The Respondent did not inform the Complainant the explicit or specified purposes for collecting and processing his personal data before or during the processing, that is, for purposes of evidence for future litigation. They sought to define the purpose of the processing in response to the notification of complaint by this Office.

63. This is compounded by the fact that the Call was recorded in the context of a conversation between the Complainant and the Respondent's HR representatives

as regards a consultation on his exit details. It was later further processed by a 'sister company', Liquid Mauritius, who were not part of the initial data collection, to be used as evidence in an arbitration proceeding.

64. It is thus the finding of this Office that the Respondent did not process the Complainant's personal data in accordance with the principle of purpose limitation.

65. To conclude this issue, this Office finds that the Respondent failed to fulfil its obligations in accordance with the Act and the attendant Regulations.

II. WHETHER THERE WAS A VIOLATION OF THE COMPLAINANT'S DATA PROTECTION RIGHTS UNDER THE ACT

66. Sections 26 (a) of the Act provides that a data subject has the right to be informed of the use to which their personal data is to be put.

67. This Office has had opportunity to review the subject call recording and indeed, at approximately minute 9 of the Call, the Complainant explicitly states that he did not consent to the recording and asked for a commitment to delete the recording.

68. In response, the Respondent's HR representative confirms to the Complainant that they will delete the call recording. It is not disputed that the call recording was not deleted. In fact, it was retained and further processed by the Respondent's 'sister company' Liquid Mauritius.

69. According to the Respondent, they did not comply with the request for erasure as the personal data was required for the purposes of evidence.

70. The Complainant exercised his right to erasure in accordance with Section 40 (1)(b) of the Act which obligates a data controller to erase or destroy, without undue delay, personal data that the data controller or data processor is no longer authorized to retain, irrelevant, excessive or obtained unlawfully.

71. Further, Section 40 (3) of the Act, states that, where a data controller or data processor is required to rectify or erase personal data but the personal data is required for the purposes of evidence, the data controller or data processor shall, instead of erasing or rectifying, restrict its processing and inform the data subject within a reasonable time.

72.No evidence of compliance with Section 40 (3) of the Act was adduced before this Office.

73.Conversely, whereas the Respondent had a duty to inform the data subject of the continued processing and that the request for erasure had been declined, they proceeded to process the Complainant's personal data, one year later. This does not qualify as 'reasonable time'.

74. In conclusion, the Office finds that the Respondent violated the Complainant's right to be informed of the use to which his personal data is to be put under Section 26(a) of the Act and his right to erasure under Section 40 (1)(b) of the Act.

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

75.Having considered the merits of the Complaint, the evidence adduced by the Complainant and the Respondent, and having found that the Respondent processed the Complainant's personal data unlawfully it therefore, follows that there has been a violation of the Act by the Respondent to that extent.

76.Pursuant to Regulation 14 (2) of the Enforcement Regulations, a determination shall state the remedy to which the Complainant is entitled. The remedies are provided for in Regulation 14 (3) of the Enforcement Regulations.

77.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.

78.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.

79.Having found that the Respondent processed the Complainant's personal data without a lawful basis and violated the Complainant's data protection right to be informed of the use to which his personal data is to be put and his right to erasure,

the Respondent is hereby directed to compensate the Complainant the amount of **KES 700,000/= (Seven Hundred Thousand Shillings Only)**.

80. In so doing, this Office takes into account the nature of the personal data in issue, the scope of the unlawful processing, the duration and extent of violation with regard to unlawful processing of the Complainant's personal data and the conduct of the Respondent in not adhering to the principles of data protection.

81. Furthermore, Section 58 of the Act as read together with Regulations 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 further contemplates, as a remedy, the issuance of Enforcement.

82. Having found that the Respondent did not fulfill their obligations provided for under the Act, the Office hereby orders an Enforcement Notice to be issued against the Respondent.

I. FINAL DETERMINATION

83. 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 compensate the Complainant **KES 700,000 (Seven Hundred Thousand Kenya Shillings Only)**.
- iii. An Enforcement Notice to issue 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 3rd day of November 2025.



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER

