



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1667 OF 2024

EVERLYN LAVUHA MUGITA SUING ON BEHALF

OF N.S.M (MINOR)COMPLAINANT

-VERSUS-

NOVA PIONEER KENYA LIMITED.....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 on 21st October, 2024 alleging that the Respondent issued a letter to a third party containing personal information of her child without prior consent from her as the parent.

B. LEGAL BASIS

2. Article 31(c) and (d) of the Constitution of Kenya 2010 provides for the right to privacy. Consequently, as an effort to further guarantee the same, the Data Protection Act, 2019 (hereinafter as 'the Act') was enacted.
3. The Office of the Data Protection Commissioner (hereinafter 'this Office' 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 (Complaint 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 21st October 2024. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations from the Complainant who is an aggrieved data subject.
7. Pursuant to Regulation 11 of the Enforcement Regulations, this Office notified the Respondent of the complaint filed against it *vide* a letter dated 12th November, 2024 and referenced ODPC/CONF/1/5 VOL II(301). In the Notification of the Complaint, the Respondent was informed that if the allegations by the Complainant were true, it was 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 it by the Complainant;
 - b. Any relevant materials or evidence in support of the response;
 - c. The lawful basis relied upon to process and engage with the Complainant's personal data;

- d. Proof of consent from the Complainant to share his/her Child's information to third parties as alleged;
 - e. A duly signed contract or agreement between the Respondent and the Complainant;
 - f. A detailed description of how data subjects can exercise their data protection rights;
 - g. Its data protection policy;
 - h. 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
 - i. Any other information it wishes the Office to consider.
8. The Respondent submitted its response to the Notification of Complaint letter *vide* a letter dated 17th December, 2024 and further documents and information on 16th January, 2025.
 9. The Complainant filed a rejoinder to the Respondent's response on 13th January, 2025.
 10. This determination is therefore as a result of analysis of the complaint as received, the response from the Respondent and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

11. The complaint relates to the alleged sharing of a Minor's personal data to third parties without obtaining prior consent from the Complainant as the parent to the Minor.

E. SUMMARY OF EVIDENCE ADDUCED

I. THE COMPLAINANT'S CASE

12. The Complainant, lodged this complaint on behalf of a minor N.S.M (hereinafter as 'the Minor') in her capacity as the parent of the said Minor.

13. The Complainant alleged that a letter was issued to third parties being, Bluepath Safaris Travel Company and the US Embassy Consulate, with personal information of her child without obtaining prior consent from her as the parent to the child.
14. The said letter was issued to 16 parents to seek for a visa to the United States of America. The parents were given the following documents:
- i) An invitation letter from World Scholars Cup Debate Competition bearing all student's information.
 - ii) An introduction letter from the Respondent listing qualifying scholars.
15. The Complainant stated that her child's information, contained in the letter, was displayed to all the 16 parents and presented to the US Embassy on 18th October 2024 without her consent.
16. She further stated that the breach has caused her emotional distress as the release of personal information about her child to a third-party individual can lead to identity theft or fraud.
17. The Complainant prayed for a fine to be imposed on the Respondent and for compensation.
18. The Complainant provided the following documents as evidence:
- i) An invitation letter from World Scholars Cup Debate Competition bearing all student's information.
 - ii) An introduction letter from the Respondent listing qualifying scholars.
 - iii) A copy of her National Identification Card.
 - iv) A copy of her Child's Birth Certificate.
 - v) Screenshots of WhatsApp messages.

II. THE RESPONDENT'S RESPONSE

19. The Respondent stated that the processing of the children's data was necessitated by an invitation letter from the World Scholars Cup dated 26th September, 2024. The letter contained the names of participating students

and chaperones, requesting that they be granted visas for entry in the United States to attend an academic competition hosted by Yale University.

20. The Respondent stated that as part of its educational mission to foster students' growth and provide meaningful opportunities, the Nova Pioneer School – Athi River, sought to facilitate the trip. This included issuing a consent form to the relevant parents, which was accessible only by the school trips team and distributed via Google Forms.

21. The Respondent emphasized that the Consent Form provided key language demonstrating express parental consent for data sharing with its partner tour company Bluepath Safaris Limited (hereinafter as 'the Tour Company'). Specifically, it included the following clauses:

At page 1 – "I... understand and consent to my child attending the parent-sponsored, school organized international trip to Yale University, Connecticut, USA for World Scholar's Cup Competition – Tournament of Champions from 12th November to 24th November 2024 in partnership with Bluepath Safaris Ltd – through the school's appointed travel agent (Bluepath Safaris Ltd)."

At page 2 – "I further understand that this trip is being planned in partnership with Bluepath Safaris Limited. As such, the School will not personally collect funds for this trip. All funds shall be paid directly to Bluepath Safaris Limited."

22. The Respondent averred that parents voluntarily signed the consent form with full knowledge of the terms, evidencing their agreement to the data processing requirements.

23. Furthermore, some parents exercised their right to opt out of engaging with the Tour Company and made independent arrangements for their children. Therefore, any such parent, including the Complainant could exercise the right to opt in or opt out.

24. Regarding the sharing of student data with the US Embassy Consulate, the Respondent stated that it forwarded the names of the students and limited

necessary information to the U.S Consulate in a single letter as part of standard visa application procedures.

25. In conclusion, the Respondent stated that it acted in good faith and in the best interest of the children, without any commercial motive. It prayed that the matter be resolved in its favour.

26. The Respondent provided the following documents as evidence:

- i) An invitation letter from World Scholars Cup Competition.
- ii) The Service Delivery Agreement between Nova Pioneer - Athi River Campus and Bluepath Safaris Limited.
- iii) Consent Form.
- iv) Its Data Privacy Policy.
- v) Student Trip Guidelines.
- vi) Tournament of Champions (TOC) sign up responses.

F. INVESTIGATIONS UNDERTAKEN

27. This Office reviewed the complaint as lodged, the Respondent's response, and all the supporting documents provided by the Complainant.

28. After careful analysis of the adduced evidence, the following were established:

- i) The subject letter contained personal data being; the Minor's name, gender, passport number, date of birth and nationality.
- ii) The Tournament of Champions (ToC) sign up responses document submitted by the Respondent indicates that on 25th September, 2024, the Complainant did not consent to the processing of her child's personal data as she responded with "no" indicating that her child will not participate in the World Scholars Cup.
- iii) The Respondent shared with the Office a Consent to Share Student Information for World Scholar's Cup Forms to the Embassy and relevant Government Offices, filled and submitted via Google Forms by the parents. There was no such form signed by the Complainant and

submitted with the others indicating that the Minor's parent did not consent to the sharing of the minor's personal data with third parties.

G. ISSUES FOR DETERMINATION

29. In light of the above, the following issues fall for determination by this Office:

- i. Whether the Respondent obtained parental consent from the Complainant to process the Minor's personal data;
- ii. Whether the Respondent fulfilled its obligations under the Act; and
- iii. Whether the Minor is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THE RESPONDENT OBTAINED PARENTAL CONSENT FROM THE COMPLAINANT TO PROCESS THE MINOR'S PERSONAL DATA

30. The Complainant stated that the Respondent did not seek prior consent from her as the parent of the Minor, before sharing her child's personal data with third parties.

31. Further, the Complainant asserted that the request to have parents sign the consent form was an afterthought, initiated only after parents began raising complaints about the sharing of their children's data. This reactive measure does not retroactively validate the prior sharing of data without explicit and informed consent.

32. On the other hand, the Respondent stated that it issued consent forms to the relevant parents which were only accessible by the School trips team and distributed via Google Forms.

33. Section 33(1)(a) of the Act states, "*every data controller or data processor shall not process personal data relating to a child unless consent is given by the child's parent or guardian.*"

34. Section 32(1) of the Act states that, "*a data controller or a 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.*"

35. The Respondent in its response submitted a blank consent form. Upon being requested to submit a duly filled consent form signed by the Complainant, the Respondent provided the Consent to Share Student Information forms, which were submitted *via* Google Forms by the parents. None of the consent forms shared had been signed by the Complainant.
36. Additionally, the Respondent indicated that the Minor did not sign up to travel and therefore they did not share her details with Bluepath Safaris Limited. However, the parents wrote to the school requesting letters of introduction to the Embassy which the Respondent issued. These letters contained the Minor's personal data.
37. Further, the ToC sign up responses document submitted by the Respondent indicates that the Complainant did not consent to the processing of her child's personal data as she responded with "no" indicating that her child was not going to participate in the World Scholars Cup.
38. The Respondent did not provide any evidence to prove that it obtained consent from the Minor's parent to share her child's personal data with third parties.
39. In addition to the above, the Respondent did not prove that it satisfied the conditions set out in Section 30(1)(b) that allow for the processing of personal data without obtaining consent from the data subject.
40. From the above, this Office finds that the Respondent did not obtain parental consent before processing the Minor's personal data.

II. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT;

41. The Respondent is a data controller within the definition of the Act and therefore has obligations pursuant to the Act.
42. The Respondent had an obligation under Section 25 of the Act to ensure that the Minor's personal data is, amongst others:
- i. processed in accordance with her right to privacy;

- ii. processed lawfully, fairly and in a transparent manner in relation to the Complainant;
- iii. collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes; and
- iv. collected only where a valid explanation is provided whenever information relating to private affairs is required.

The Respondent contravened the above principles of data protection by not adhering to the same while processing the Minor's personal data.

43. Section 30 of the Act gives instances where a data controller or data processor can lawfully process personal data. It states 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 reasons given in subsection (b).*" The Respondent failed to provide proof of having obtained parental consent to process the Minor's personal data. Further, the Respondent did not prove that it satisfied the reasons outlined in Section 30(1)(b) that allow for the processing of personal data without obtaining consent from the data subject. Therefore, the Respondent unlawfully processed the Minor's personal data as it did not demonstrate that it had a lawful basis to share the Minor's personal data with third parties.

44. From the foregoing, this Office finds that the Respondent did not fulfil the above obligations as set out under the Act and the attendant Regulations.

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

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

46. The Complainant prayed for compensation. Section 65 of the Act provides for compensation to data subjects 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."

47. Section 65(4) of the Act states that, "*damage includes financial loss and damage not involving financial loss, including distress.*"

48. Further, Regulation 14(3)(e) of the Enforcement Regulations provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.

49. In considering whether to issue compensation, this Office takes into consideration the fact that the complaint is in respect to the unlawful processing of a minor's personal data. Personal data belonging to minors requires special protection due to their vulnerability and should always advance the rights and best interests of the child.

50. The Office hereby orders the Respondent to pay the Complainant **Kenya Shillings five hundred thousand (KES. 500,000)** as compensation for the unlawful processing of the Minor's personal data.

H. FINAL DETERMINATION

51. The Data Commissioner therefore makes the following final determination:

- i. The Respondent is hereby found liable for unlawful processing of the Minor's personal data.
- ii. The Respondent is hereby **ordered to pay the Complainant Kenya Shillings five hundred thousand (KES. 500,000)** as compensation.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 17th day of January 2025.



**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**