



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1832 OF 2024

SILVIA WAIRIMU KIAMACOMPLAINANT

-VERSUS-

KOUNKUEY DESIGN INITIATIVERESPONDENT

DETERMINATION

Under 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 the 11th November 2024 against the Respondent alleging the Respondent shared unauthorized personal information containing the Complainant's payment details to a third party without her consent or any lawful basis.

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 11th November 2024. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations by the Complainant, the aggrieved data subject.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondent of the complaint filed against it *vide* a letter dated 25th November 2024 and referenced ODPC/CONF/1/5 /VOL II (361). 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. A contact person who can provide further details as regards the complaint.
 - c. Provide any relevant materials or evidence in support of your response.

- d. The lawful bases relied upon to process the complainant's personal contact.
 - e. A copy of complainant's bio data.
 - f. Evidence as to whether the Complainant consented to sharing of her personal data with her father.
 - g. An elaborate representation of how data subjects can exercise their rights in relation to data protection.
 - 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.
 - i. Any other relevant information it wishes the Office to consider.
8. The Respondent responded to the Notification of Complaint letter *vide* a letter dated 13th December 2024.
9. This determination is therefore a result of analysis of the complaint as received, the response by the Respondent and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

10. The Complainant asserts that the Respondent unlawfully disclosed confidential financial and medical information, including final settlement, salary, and payment details, by sending an email to a third party (the Complainant's father) without consent. The Complainant further alleges that the unauthorized disclosure occurring in the context of the Complainant's medical resignation, constitutes a clear violation of privacy rights and a breach of obligations to safeguard sensitive personal data, raising serious concerns regarding the improper handling and dissemination of confidential information.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant alleges the unauthorized disclosure of personal data to a third party (her father) by her former employer, the Respondent.

12. The Complainant asserts that Respondent had improperly shared an email containing sensitive personal information with an unintended recipient third party.
13. The Complainant asserts that this disclosure was unlawful and a direct violation of her right to data privacy, as enshrined in the Data Protection Act, 2019.
14. The Complainant states that during her employment with the Respondent, she duly submitted her father's contact details as part of the bio-data form required by the employer.
15. According to the Complainant, at no point did she authorize the use of her father's contact details for any other purpose outside of emergency-related situations.
16. The Complainant contends that she tendered her medical resignation due to her health condition which requires strict management including stress and anxiety reduction.
17. Further, the Complainant submitted that the Respondent's actions constitute a direct violation of multiple provisions of the Data Protection Act, 2019, including but not limited to:
 - (i) Section 25 - Principles of Data Protection: The Complainant avers that the Respondent failed to uphold data minimization and purpose limitation principles by misusing her emergency contact details for an unrelated matter without consent.
 - (ii) Section 30 - Lawful Processing of Personal Data: The unauthorized disclosure of the Complainant's payment details to a third party was neither lawful nor fair, breaching the requirement for transparency and legality in data processing.
 - (iii) Section 35 - Right to Privacy of Data Subject: Every data subject has the right to privacy concerning their personal data, including ensuring data is not disclosed to unauthorized parties without consent.

NG

(iv)Section 37 - Purpose Limitation: Data collected for a specific purpose (emergency contact information) should not be used for another purpose without consent.

(v) Section 41 - Right to Notification: The Complainant purports that she was neither informed nor allowed to consent to the disclosure of her data, demonstrating the respondent failure to adhere to statutory notification requirements.

18. The Complainant contends that the Respondent's actions amount to a severe breach of her personal data rights and privacy. That the unauthorized disclosure of her sensitive financial information has resulted in significant emotional distress and exacerbated her medical condition, in direct contradiction to the medical advice provided for her well-being.

19. The Complainant provided email correspondence between the Complainant and the Respondent as evidence.

20. In light of the above, the Complainant prays for the following remedies.

- a) Conduct a formal investigation into the unauthorized disclosure of his personal data.
- b) Issue appropriate directives to the Respondent to ensure compliance with the Data Protection Act, 2019.
- c) Provide a remedy for the distress and harm caused by the violation, as deemed appropriate by the Office.

ii. THE RESPONDENT'S RESPONSE

21. The Respondent submitted a response to the notification of complaint in a letter dated 13th December, 2024.

22. The Respondent avers that it deeply regrets the unintended disclosure containing personal information to an unauthorized recipient. It is the Respondent's position that this incident was inadvertent and does not reflect its established data processing procedures.

23. The Respondent purports that the email in question was disseminated in good faith and was solely intended to notify the Complainant of the remittance of funds to her account.
24. The Respondent asserts that the Complainant has been contacted directly, and an unequivocal apology has been conveyed, alongside a proposal for an in-person engagement to amicably resolve the issue.
25. The Respondent avers that having worked well with the Complainant, they remain committed to addressing the issue in a manner that reflects mutual understanding and respect.
26. The Respondent asserts that there was no explicit consent to share the complainant personal data with her father. However, they contend that the inclusion of the email address was an unintentional error and maintain that no personal data was shared with any unauthorized third party.
27. According to the Respondent, it has taken corrective actions to address the matter, and that a review of the Respondent's communication protocols has been initiated to mitigate the risk of similar occurrences in the future.
28. Additionally, the Respondent states that they are committed to ensuring full compliance with the Data Protection Act, 2019. As a mitigation measure, the Respondent has scheduled an internal training session on data protection compliance and data subject rights for January 2025.
29. The Respondent provided the following documents as evidence:
- a) An email correspondence showing the alleged final payments to the Complainant.
 - b) Complainant's bio-data
30. The Respondent *vide* a letter dated 15th January 2025 made further assertions and reiterated that the data breach was an unintentional administrative error.
31. The Respondent contends they had taken corrective measures including issuing an apology, reviewing internal processes, and implementing stronger data

protection policies. They also maintained that the complainant had not suffered any material harm and urged the Office to consider these remedial actions.

32. Further, *vide* a letter dated 4th February 2025 the Respondent observes that the Complainant's medical condition, diagnosis and medication was not made available to the third party.

33. The Respondent further reiterates that the Complainant has not suffered any prejudice or damage from the disclosure of the reasons for her resignation on medical grounds to her father.

III. COMPLAINANT'S RESPONSE TO THE RESPONDENT'S RESPONSE

34. The Complainant *vide* a letter dated 9th January 2025 rejected the Respondent's explanation arguing that the personal data breach was not innocent but a culmination of sustained harassment at her workplace.

35. Further, the Complainant introduced the following additional evidence:

- i. Personal Link Counselling Foundation report dated 12th November, 2024.
- ii. Medical report dated 30th August 2024.

36. The Complainant asserts that Respondent knowingly created a toxic work environment and that the exposure of her resignation on medical grounds to her father was intentional and aimed at causing further distress.

37. Additionally, Complainant's advocates highlighted two further alleged personal data violations:

- (i) The continued registration of her Safaricom SIM card under Respondent's corporate plan despite multiple requests to have it returned to her name; and
- (ii) The linkage of her Facebook account to Respondent's corporate page, which had not been removed despite her resignation. They argued that these actions violated the principles of data minimization, right to erasure, and right to object under the Data Protection Act, 2019.

38. With regards to the alleged unauthorized disclosure, the Complainant relies on Article 31(c) and (d), Section 25(b) and (c) and Section 26(a) of the Act.
39. With regards to the issue of continued corporate linkage of the Complainant's sim card to the Respondent's corporate account, the Respondent relies on Section 25(d), 26(c) and 40(1)(b) of the Act.
40. The Complainant also referred to ODPC Complaint No. 387 of 2024 and ODPC Complaint No. 169 of 2024 whereby the compensation was KES 1,000,000 and KES 700,000 respectively as an award of compensation. In that regard the Complainant prayed for compensation to the tune of KES 1,000,000.

F. INVESTIGATIONS UNDERTAKEN

41. The Office examined the complaint lodged by the Complainant, evidence adduced in support thereof, the Respondent's written response, and all documents submitted by both parties as evidence.

G. ISSUES FOR DETERMINATION

42. It is not in contention that the Respondent sent an email containing the Complainant's payment details after her medical resignation to an unauthorized third party.
43. In light of the above, the following issues fall for determination by this Office:
- i. Whether there was a personal data breach;
 - ii. Whether there was a violation of the Complainant's rights under the Act and attendant Regulations; and
 - iii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THERE WAS A PERSONAL DATA BREACH

44. Section 2 provides the meaning of "*sensitive personal data*" as data revealing the natural person's race, health status, ethnic social origin, conscience, belief, genetic data, biometric data, property details, marital status, family details including names of the person's children, parents, spouse or spouses, sex or the sexual orientation of the data subject.

45. Section 2 of the Act further provides for "*health data*" as data related to the state of physical or mental health of the data subject and includes records regarding the past, present or future state of the health, data collected in the course of registration for, or provision of health services, or data which associates the data subject to the provision of specific health services.
46. The Complainant asserts that the Respondent unlawfully disclosed confidential financial and medical information, including final settlement, salary, and payment details, by sending an email to a third party.
47. Investigations revealed that indeed an email was sent to the third party. However, the contents of the email revealed that the information contained only included the subject line of "*resignation on medical grounds,*" the final settlement and information relating to the terminal dues. The said email did not include Complainant's medical diagnosis, treatment, medication or any other information relating to the medical condition.
48. Moreover, the email thread which was disclosed to the third party only contained two attachments which were both titled "*Sylvia final payment letter signed,*" and not the medical report as had been alleged. Therefore, on the basis of the evidence available, the Office concludes that the email thread did not contain health data which is sensitive data as alleged.
49. The Complainant produced the medical report as evidence of the sensitive data disclosed. However, the Complainant did not prove that the same report was part of the email thread disclosed to the third party.
50. Section 2 of the Act further provides that personal data means any information relating to an identified or identifiable natural person. Moreover, personal data breach is defined as a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored or otherwise processed.
51. The email thread disclosed by the Respondent contained information relating to the Complainant, including her email address and financial information. To this extent, this Office finds that there was a personal data breach that ought to

have been reported to this Office in accordance with Section 43 of the Act and the attendant Regulations.

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

52. Section 26(a) of the Act provides for the right to be informed of the use to which a data subject's personal data is to be put.

53. The Respondent, by not informing the Complainant of the use to which his personal data was to be put at the point of collection of the personal data, violated her right to be informed.

54. Section 26(c) of the Act provides for the right to object to processing of personal data. Further, Section 36 states that, "*a data subject has a right to object to the processing of their personal data, unless the data controller or data processor demonstrates compelling legitimate interest for the processing which overrides the data subject's interests...*"

55. The Complainant alleged that the sim card previously registered under her name and transferred to the Respondent's corporate account was not delinked upon her resignation. Further, the Complainant alleges that she made requests to delink which was not honoured.

56. She also alleged that her Facebook page was linked to the Respondent, a delinking request which she has since made to the Respondent has also not been honoured.

57. The Complainant however failed to adduce sufficient evidence to substantiate the claim that she had exercised her right to object to the further processing of her personal data with the Respondent.

58. From the foregoing, this Office finds that the Complainant's right to be informed of the use to which her personal data would be put under Section 26 (a) of the Act was violated by the Respondent.

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

59. 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.

60. The Complainant requested this Office to issue an award of compensation. Section 65 of the Act provides 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. The Section indicates that damage included financial loss and damage not involving financial loss including distress.

61. 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.

62. In considering whether to issue compensation, this Office takes into consideration the fact that the Complainant's right to be informed under Section 26(a) of the Act was infringed upon by the Respondent.

63. In this context, the Respondent is hereby ordered to pay the Complainant **Kenya Shillings Two Hundred and Fifty Thousand (Kshs. 250,000)** for the infringement of her rights under the Act.

H. FINAL DETERMINATION

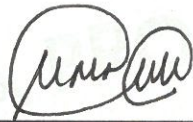
64. The Data Commissioner therefore makes the following final determination;

- i. The Respondent is found liable for violating the Complainant's right to be informed of the use to which her personal data is to be put.
- ii. The Respondent to pay the Complainant a sum of **Kenya Shillings Two Hundred and Fifty Thousand (Kshs. 250,000)** as compensation.

11/1

- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 10th day of February 2025.



**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**

