



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0320 OF 2025

ABDUL KARIM OSICHE.....COMPLAINANT

-VERSUS-

FIN AFRICA T/A TRUSTGRO SCA LIMITEDRESPONDENT

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 submitted a complaint to the Office, alleging that the Respondent staff member shared his personal information via email with a third-party contact center (a bank). The Complainant asserts that, this action breaches his right to privacy, as the shared information includes his employment contract, pay slip, bank account statement, and an M-Pesa loan statement.

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 March 6th March 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 11th April 2025 and referenced ODPC/CIE/CON/2/1 (218). In the Notification of the Complaint, the Respondents were informed that if the allegations by the Complainant were true, they were in violation of various provisions of the Act. Further, the Respondents were asked to provide this Office with the following:
 - a. A response to the allegations made against you by the Complainant;
 - b. A contact person who can provide further details as regards this complaint
 - c. The lawful basis relied upon to process the Complainant's personal data.
 - d. The lawful basis relied upon to process the Complainants personal data,

- e. Evidence as to whether the Complainant consented to the sharing of his personal data with third parties
 - f. Data sharing agreements between you and premier Bank, and Platinum credit limited.
 - 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; and
 - i. Any other relevant information they wish the Office to consider.
8. The Respondent submitted a response to the allegation vide a letter dated 16th April 2025.
9. 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

10. The nature of this complaint is the alleged unauthorized disclosure of the Complainant's personal information by the Respondent's staff member via email to a third-party contact center (a bank), without the Complainant's consent. The personal information disclosed includes the Complainant's employment contract, pay slip, bank account statement, and M-Pesa loan statement. The Complainant contends that this action constitutes a breach of his right to privacy.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant purports that the Respondent, through their staff member, unlawfully shared his personal data and sensitive personal data with a third party's general contact address.

12. He contends that the data disclosed included his employment contract, bank account statements, MPESA statements, payslips, loan statements, and loan details from the Respondent.
13. Furthermore, the Complainant avers that this disclosure was made to an email group comprising over ten colleagues, thereby causing severe professional and reputational damage.
14. The Complainant highlights that he has suffered undue embarrassment and continues to endure emotional distress due to this breach, asserting that the Respondent's actions violated his right to privacy under data protection laws.
15. The Complainant sought the following remedies from this Office:
- i. The Complainant is seeking a declaration that the Respondent's actions violated his right to privacy.
 - ii. He requests for an order compelling Respondent from further sharing his personal data.
 - iii. The Complainant demands general damages for emotional distress, reputational harm, embarrassment, and damage to his professional image.
 - iv. Furthermore, he seeks exemplary and punitive damages to deter similar violations in the future.

16. The Complainant provided the following documents in support his complaint:

ii. THE RESPONDENTS' RESPONSE

17. The Respondent submitted a response to the allegations vide a letter dated 16th April 2025. In their response the Respondent contended that that the unauthorized disclosure resulted from a staff member's inadvertent error, which occurred while following up on a loan repayment.
18. They purported that the breach was unintentional; however, they acknowledged that the email did indeed contain sensitive personal data, thereby admitting that the incident contravened Sections 25 and 43 of the Data Protection Act.

19. Furthermore, the Respondent indicated that they had taken immediate remedial actions, which included requesting the employer to delete the email in question and initiating a review of internal communication protocols.
20. In addition, they emphasized the implementation of preventive measures, such as staff retraining, revision of data protection policies, as well as the introduction of email alerts for outgoing messages containing personal or sensitive data.

iii. THE COMPLAINANT' RESPONSE TO RESPONDENT RESPONSE

21. The Complainant contends that, it is evident based on the Respondent's own admission, his private and confidential information was shared without his consent to a common email address accessible by multiple unauthorized recipients. He asserts that this action constitutes a flagrant breach of his constitutional right to privacy under Article 31 of the Constitution of Kenya, 2010, which guarantees protection against the unauthorized disclosure of personal information.
22. Moreover, the Complainant argued that the Respondent's conduct contravenes several provisions of the Data Protection Act, 2019, including:
- i. Section 25, which mandates that personal data be processed lawfully and fairly;
 - ii. Section 30, which obligates data controllers and processors to implement appropriate technical and organizational measures to safeguard data;
 - iii. Section 31, which requires that personal data be processed only for specified, explicit, and legitimate purposes. The Complainant purported that the violation has caused emotional trauma, reputational harm, and has exposed him to the real and imminent risk of employment loss.
23. He further asserts that the remedies proposed by the Respondent are insufficient, as they fail to provide any form of compensation or meaningful redress for the damage suffered. Consequently, the Complainant respectfully seeks the following reliefs from this Honorable Office:

- i. A declaration that the Respondent actions amount to a violation of his right to privacy under Article 31 of the Constitution of Kenya and the Data Protection Act, 2019;
- ii. An order compelling the Respondents to issue a formal, written apology, acknowledging the breach and taking full responsibility for the harm caused;
- iii. An award of general damages for emotional distress, professional reputational harm, and embarrassment suffered due to the unauthorized disclosure;
- iv. An award of exemplary and punitive damages intended to serve as a deterrent against future breaches by the Respondents or similar entities;
- v. Any other orders that this Honorable Office may deem just and appropriate in the interest of justice.

F. ISSUES FOR DETERMINATION

24. It is not in contention that the Respondents, by their own admission, shared the Complainant's personal data without his consent.

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

- i. Whether there was a violation of the Complainant's rights under the Act and attendant regulations.
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

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

26. Section 26(a) of the Data Protection Act, 2019 provides that a data subject has the right to be informed of the use to which their personal data is to be put. This provision imposes obligation on data controllers and processors to ensure that data subjects are aware, in advance, of how, why, and with whom their personal data will be shared or processed.

27. The facts presented reveal that the Respondent, through one of its staff members disclosed the Complainant's personal data including an employment

contract, pay slip, bank account statement, and M-Pesa loan statement via email to a third-party bank contact centre. There is no evidence that the Complainant was informed in advance of this disclosure. The Respondent has admitted to the disclosure, characterizing it as an inadvertent error during a follow-up on loan repayment.

28. However, this admission does not negate the fact that at the time of processing and disclosure, the Complainant was not provided with any information regarding the intended use of his data or the identity of the third party receiving it. The failure to communicate this information deprived the Complainant of the opportunity to exercise control over his personal data and to object to its processing or disclosure.

29. Based on the above, it is evident that the Respondent violated Section 26(a) of the Data Protection Act by failing to inform the Complainant of the use to which his personal data would be put.

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

41. 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.

42. The Complainant prays for an order compelling the Respondents to issue a formal and official written apology, acknowledging their breach and taking responsibility for the harm caused.

43. The Office finds that issuing of a formal and a written apology are not remedies contemplated under Regulation 14(3) of the Enforcement Regulations.

44. With regards to the award of compensation, Section 65 of the Act provides for compensation to data subjects and states, "*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.*"

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

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

47. In considering whether to issue compensation, this Office takes into consideration the fact that the Respondents either intentionally or negligently violated the Complainant's right to be informed and the unlawful processing of his personal data.

48. The Office hereby orders the Respondent to pay the Complainant **Kenya Shilling One Hundred and Fifty Thousand (KES. 150,000/=)** as compensation.

G. FINAL DETERMINATION

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

- i. The Respondent is hereby found liable.
- ii. The Respondent is hereby ordered to pay the Complainant **Kenya Shillings One Hundred and Fifty thousand (KES. 150,000/=)** 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 2nd day of June 2025.



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER