



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0456 OF 2025

LYNDA NAMUSONGE MATURU.....COMPLAINANT

-VERSUS-

KENYA BANKERS SACCO.....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 against the Respondent, alleging that her personal data was shared in a single email sent to all guarantors across two separate loans, despite each loan having distinct guarantors. The Complainant contends that this disclosure exposed her personal and sensitive information including health related details to unrelated third parties, causing reputational harm and emotional distress. She asserts that the Respondent acted beyond its data protection obligations and violated her privacy rights.

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 24th 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 28th April, 2025 and referenced ODPC/CIE/CON/2/1 (253). 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;
 - b. A contact person who can provide further details as regards to this complaint
 - c. Any relevant materials or evidence in support of your response above

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- d. The lawful basis relied upon to process the Complainant's personal data.
 - e. A list of guarantors for each of the Complainant's personal data.
 - f. An elaborate representation of how data subjects can exercise their rights in relation to data protection.
 - g. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant and the mitigation measures adopted or being adopted to ensure that such occurrences mentioned in the Complaint do not take place again
 - h. Any other relevant information they wish the Office to consider.
8. The Respondent submitted their response vide a letter dated 20th May, 2025.
9. This determination is therefore as a result of analysis of the complaint as received, the respondent responses and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

10. It is the Complainant's averment that the Respondent unlawfully processed her personal data by sharing her loan details with guarantors unrelated to the respective loan facilities. She further avers that this disclosure included information relating to her medical overspend and health status, thereby constituting the processing of sensitive personal data. In her view, this violated her right to privacy.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant avers that her personal information was shared in a single email with all the guarantors of two separate loans administered by the Respondent. The Complainant states that each loan had distinct guarantors, and her personal details were exposed to individuals with no connection to one of the loans.
12. The Complainant contends that this exposure of her personal data to unrelated parties is the crux of her complaint, as it was neither necessary nor justified for the Respondent to share such information.

13. The Complainant notes that the Kenya Data Protection Act, 2019, stipulates that personal data must be handled lawfully, fairly, and transparently. Under Section 25(1) of the Act, personal data should only be shared with those who have a legitimate need to know.
14. In this regard, the Complainant avers that the sharing of her personal details with unrelated guarantors contradicts this requirement, as it was neither necessary nor appropriate for those individuals to access her data.
15. The Complainant further contends that the Respondent violated the data minimization principle. According to the Act, personal data should only be disclosed when necessary and appropriate for the specific purpose for which it was collected. The Complainant avers that by sharing her details with guarantors unrelated to her loan, the Respondent acted in contravention of this fundamental requirement.
16. Additionally, the Complainant purports that the Respondent violated the purpose limitation principle. The data collected was intended solely for the specific purpose of facilitating the Complainant's loan and should not have been shared with other individuals who had no involvement in that loan.
17. The Complainant states that the unauthorized sharing of her personal data has caused her significant distress and discomfort. The Complainant avers that her privacy was compromised, exposing her to potential reputational damage and undue pressure.
18. The Complainant contends that, as a data subject, she had a reasonable and legitimate expectation that her personal information would only be shared with those directly involved with her loan. The breach of this trust is deeply concerning and has negatively impacted her.
19. In view of the above, the Complainant respectfully requests the Office of the Data Protection Commissioner to reconsider its decision and to take appropriate action against the Respondent.
20. The Complainant avers and submits that her personal data was shared in a manner that violates her rights and protections under the Kenya Data Protection Act, 2019.
21. The Complainant sought the following remedies from this Office:



- i. Compensation for the reputational and health issues/medical bills incurred.
- ii. Apology for the Reputational loss caused.
- iii. The sacco to stop sharing confidential information with unconcerned parties.

ii. THE RESPONDENTS' RESPONSE

22. The Respondent avers that the Complainant took out two loan facilities as follows an Express Loan for Kshs. 200,000 in January 2023 and an Elite Loan for Kshs. 2,800,000 in November 2022.
23. The Respondent maintains that both loans were advanced and repayable on terms captured in the Loan Application Forms signed by the Complainant, as well as the Respondent's By-laws and Credit and Recovery Policy.
24. The Respondent states that both loans were secured by the savings of several Guarantors, who are also members of the Sacco and who duly signed the relevant Loan Application Forms.
25. The Respondent contends that it was an express and common term of both loan facilities that the same would be repayable by stipulated monthly instalments. Moreover, the Respondent further maintains that, in the event of default by the Complainant, her savings would be forfeited towards the settlement of any arrears, and any deficits arising therefrom would be recovered from the Guarantors' deposits.
26. The Respondent avers that upon execution of the Loan Application Forms, the Complainant expressly consented to the sharing of her personal information in accordance with the provisions of the Kenya Data Protection Act, 2019, and the Respondent's Privacy Notice.
27. The Respondent confirms that a link to its Privacy Notice was embedded within the Loan Application Forms and published on its website (<https://www.kenyabankers.coop>).
28. The Respondent further maintains that, under Clause 10 of its Privacy Notice, it is authorized to disclose a data subject's personal information where required by law, for the enforcement of agreements, or for the protection of the rights, property, or safety of the Sacco, its members, employees, or other stakeholders.

29. The Respondent avers that from early 2023, the Complainant began to default in making her monthly loan instalments, causing her account to fall into arrears. As of 26th October 2023, the loan balances stood at Kshs.110,745.68 and Kshs. 2,625,399.73, respectively.
30. The Respondent maintains that it attempted to have the Complainant regularize her loan payments by reaching out to her through several communications, all of which failed to yield the desired results.
31. Further Respondent contends that it is obliged, both contractually and in its fiduciary role, to notify the Guarantors of any defaults and thereby copied the Guarantors in its correspondence with the Complainant.
32. The Respondent confirms that the Complainant responded to one such email (dated 06/09/2023), citing medical overspending due to a chronic illness and committing to settle the overdue amounts by 27/09/2023. The Respondent maintains that, despite numerous undertakings by the Complainant, she failed to regularize the loan, necessitating further correspondence that included the Guarantors.
33. The Respondent avers that it did not "process" the Complainant's sensitive personal information, including details about her health status, within the meaning of Sections 2 and 46 of the Kenya Data Protection Act.
34. In the event it is deemed that the Respondent engaged in such processing, it submits that the information was manifestly made public by the Complainant herself, as contemplated under Section 45(b) of the Kenya Data Protection Act, 2019.
35. The Respondent further maintains that any processing was necessary for carrying out its obligations, exercising its rights, and protecting the vital interests of the Guarantors, as envisaged by Section 45(c) of the Kenya Data Protection Act.
36. The Respondent avers that a tripartite fiduciary relationship existed between itself, the Complainant, and the Guarantors. In this context, the Respondent maintains that both as a matter of public policy and prudent lending practice, the Guarantors were entitled to information about the status of the Complainant's loan and any instances of default.

37. The Respondent contends that, within this fiduciary framework, it acted lawfully and appropriately in notifying the Guarantors about the status of the loan and the Complainant's obligations. This processing and sharing of data was necessary for the Respondent to fulfil its contractual duties, exercise its rights, and protect the vital interests of the Guarantors, in line with Section 45(c) of the Kenya Data Protection Act, 2019.
38. The Respondent further asserts that its sharing of the Complainant's data was justified under Section 30(1)(b)(vii) of the Kenya Data Protection Act and Regulation 5 of the Data Protection (General) Regulations, 2021, which expressly permit the processing of personal data for legitimate interests.
39. The Respondent maintains that the Complainant's claim of a privacy breach is neither tenable nor made in good faith, especially as she responded to the relevant correspondence and copied all recipients, including the Guarantors.
40. The Respondent further avers that following the filing of this Complaint, and upon invitation to an ADR meeting on 16th May 2025, the Complainant conditioned her participation upon the complete write-off of her debts an indication that the Complaint is an attempt to avoid her contractual obligations.
41. In conclusion, the Respondent maintains that by signing the Loan Application Forms, the Complainant expressly consented to the sharing of her personal information. As such, the notice requirement under Section 29 of the Kenya Data Protection Act was satisfied, and the information was shared lawfully, legitimately, and in compliance with Section 30(1)(b) of the Act.

iii. THE COMPLAINANT'S FURTHER RESPONSE

42. The Complainant avers that the Respondent has not annexed the original loan application forms and requests their production for review. She contends that the assertion that terms were "partly captured" in those forms raises questions about disclosure and transparency, in contravention of Section 25 of the Kenya Data Protection Act, 2019.
43. The Complainant maintains that although the Respondent attached a list of Guarantors, it circulated a blanket email to all Guarantors regardless of their loan obligation. She contends this violated the data minimization and purpose limitation

principles set out in Sections 25(c) and (d) of the Act and exposed her sensitive information to unrelated parties.

44. The Complainant avers that any clause permitting data sharing must be read in light of Sections 25(c) and (d), which require purpose-specific disclosure. She maintains that information about one loan was shared with Guarantors of a different loan, which was neither necessary nor lawful.
45. The Complainant contends that she was not adequately informed about the privacy notice or its contents when signing the loan forms. She requests a copy of the original application form to confirm that her consent was expressly and appropriately sought, as required under Section 32 of the Act.
46. The Complainant maintains that the Respondent's reliance on its privacy notice does not justify sharing data with unrelated parties. She avers that Sections 25 and 29 of the Act require that data be disclosed only to those with a legitimate interest
47. The Complainant denies the Respondent's assertion that her loans were fully in arrears and maintains that she kept the Respondent informed of her situation, making partial payments where possible.
48. The Complainant contests the Respondent's claim that she was unresponsive. She maintains that she engaged with the Respondent and attempted to regularize payments, despite its dismissive and hostile responses.
49. The Complainant avers that she did not make false promises to pay. She maintains that she kept the Respondent apprised of delays and acted in good faith. The blanket sharing of sensitive information, including medical details, violated Sections 25(d) and 46 of the Act and was disproportionate and unjustified.
50. The Complainant refutes the Respondent's claim that she made her sensitive information public. She avers that this information was disclosed exclusively for loan processing and its subsequent sharing required a lawful basis, which the Respondent has failed to demonstrate.
51. The Complainant contests the Respondent's claim that its sharing of data was necessary for the protection of vital interests. She maintains that it was neither relevant nor necessary for Guarantors unrelated to a specific loan to be privy to that information, contravening Sections 25(b), (c), and (d) of the Act.

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- 52.. The Complainant avers that the Respondent's claim of acting within fiduciary duties does not justify its blanket disclosure of sensitive data. The Complainant maintains that Sections 25 and 46 of the Act must be adhered to, regardless of internal policies.
53. The Complainant denies that responding to the blanket email amounted to consent for its disclosure. She maintains that the damage to her privacy had already been done and that her reply was an attempt to mitigate its effects.
54. The Complainant contests the Respondent's assertion that she sought a loan write-off as a precondition for ADR. She maintains that the Respondent acknowledged its error and offered an apology at the ADR meeting, only to contradict that position in its submissions before the Office.
55. The Complainant maintains that signing the loan application form did not authorize the Respondent to share sensitive or unrelated data. The review of its data-sharing policies, as stated in its mitigation measures, confirms that its prior practices failed to align with Sections 25, 29, and 30 of the Kenya Data Protection Act.
56. The Complainant maintains that the Respondent violated the Kenya Data Protection Act by sharing sensitive information beyond its lawful or legitimate purpose. She respectfully requests the Office to consider these clarifications and to hold the Respondent accountable for its contravention of the data protection principles, and to award her appropriate relief and compensation for the resulting harm

F. ISSUES FOR DETERMINATION

57. 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 Respondent fulfilled its obligation under the Act and its attendant regulation.
 - iii. 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

58. Section 26(a) of the Kenya Data Protection Act, 2019 guarantees every data subject the right to be informed of the use to which their personal data is to be put, including an express and clear notice of any intended sharing of such data with third parties.

59. The Respondent relies upon a generic privacy notice and loan application form to justify the sharing of the Complainant's personal data. However, the Respondent has failed to produce the original signed loan application form, providing only a copy of its own version. Moreover, the privacy notice cited is dated 8th March 2024, a date subsequent to the granting of the loans in question, making it inapplicable at the point of contract. Critically, the Respondent has not availed its Credit and Recovery Policy to substantiate its claim as stated in Paragraph 2 of its response that such disclosure of personal data was contemplated within the loan agreement.

60. In the absence of the original signed loan application form and any supporting Credit and Recovery Policy, and given that the privacy notice post-dates the loan agreements, it has not been demonstrated that the Complainant was clearly and expressly informed of the intended sharing of her personal data with unrelated guarantors at the time of contracting. A generic privacy notice issued after the fact cannot satisfy the requirements of Section 26(a), which demands specific and unequivocal notice prior to or at the point of data collection.

61. In light of these facts, the Office finds that the Respondent failed to provide clear, express, and notice to the Complainant about the intended sharing of her personal data with unrelated Guarantors, thereby infringing upon her right to be informed under Section 26 (a) of the Act.

II. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATION UNDER THE ACT.

62. In addressing this issue, the Office will address the following questions –

- i. Did the Respondent process the Complainant's personal data in accordance with the principles of data protection?

- ii. Did the Respondent fulfil its duty to notify?

Did the Respondent process the Complainant's personal data in accordance with the principles of data protection?

63. Before answering this question, it is important to note that while the Complainant contends that her personal information, including details related to medical overspending and a chronic illness, was disclosed to unrelated guarantors across two separate loans, causing reputational damage and emotional distress as she terms it as sensitive personal data.
64. The Office finds that, it is worth noting that the nature and level of detail disclosed do not satisfy the statutory threshold for "sensitive personal data" as defined under Section 2 of the Kenya Data Protection Act, 2019. Nonetheless, the Respondent's sharing of any personal information beyond its intended recipients raises serious concerns under the general data protection principles, including the right to privacy (Section 25(a)), lawful processing (Section 25(b)), and the principles of purpose limitation and data minimisation .
65. Section 25 of the Act obligates every data controller or processor to process personal data in adherence to the set principles which includes inter alia;
- i. Process in accordance with their right to privacy and 25 (a)
 - ii. process lawfully, fairly and in a transparent manner in relation to data subjects 25(b)
 - iii. Adequate, relevant, and limited to what is necessary (data minimization — Section 25(d)
66. In the present matter, the Respondent failed to adhere to these fundamental requirements. The Respondent circulated the Complainant's personal data across unrelated guarantors regardless of their direct stake in the specific loan agreement.
67. In doing so, it violated the Complainant's right to privacy, acted unfairly and non-transparently by exceeding the scope of disclosure that could have been contemplated, and neglected the requirement for data to be limited to its specific and intended purpose.
68. Notably, the Respondent has failed to produce the original signed loan application forms or its Credit and Recovery Policy, making it impossible for this Office to verify

that the Complainant was adequately informed about the scope of data-sharing. The privacy notice upon which the Respondent now relies came into effect after the loans were executed, further underscoring the absence of clear and informed disclosure to the Complainant.

69. Moreover, The Respondent's reliance on "legitimate interests" as per Section 30(1)(b)(vii) is neither established nor justified. The Respondent has failed to produce evidence such as the original loan agreement, its Credit and Recovery Policy, or an explicit consent clause to justify that this data sharing was expressly anticipated or disclosed. In the absence of such proof, its claim of legitimate interests lacks both factual and legal grounding.

70. In summary, although Section 30(1)(b)(vii) allows processing based on legitimate interests, the Respondent has not demonstrated that its blanket disclosure of the Complainant's personal data satisfied the criteria of necessity, proportionality, or reasonable expectations.

71. In the circumstances, the Respondent has failed to justify its processing of the Complainant's personal data under the legitimate interests provision of the Act, and its conduct amounts to a contravention of Sections 25 (a),(b),(d), and 30 of the Kenya Data Protection Act.

Did the Respondent fulfil its duty to notify?

72. Section 29 of the Act provides an obligation to data controllers or data processors of the duty to notify the data subject. Notably, the data subject has to be informed of, *inter alia*;

- i. rights specified under Section 26;
- ii. the fact that personal data was being collected;
- iii. the purpose of collection of their personal data;
- iv. the third parties whose personal data has been or will be transferred to, including details of such safeguards adopted.

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73. In the matter at hand, the Respondent has failed to fulfil this obligation. The Complainant was not expressly informed that her data would be circulated to unrelated guarantors across different loan facilities.

74. Accordingly, the Respondent violated Section 29 of the Kenya Data Protection Act, 2019, by failing to provide the Complainant with the requisite information at the point of data collection and by neglecting its obligation to clearly state the recipients of such data and the safeguards implemented for its protection.

75. Consequently, this Office finds that the Respondent failed to fulfil its statutory duty to notify the Complainant as prescribed under Section 29 of Act.

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

76. 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.

77. 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.

78. 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.

79. 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.

80. However, we are cognizant of the fact that the Complainant had a duty to service her loan obligations, and it was her arrears that precipitated the present complaint. In these circumstances, while the Respondent is found to have contravened Sections 25, 29, and 30 of the Kenya Data Protection Act, 2019, the Complainant's

default in her loan obligations is taken into account when factoring the issue of compensation.

81. In this context, the Respondent is hereby ordered to pay the Complainant **Kenya Shillings Fifty Thousand (KES 50,000)** for the infringement of his rights under the Act.

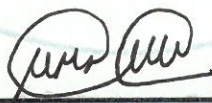
82. Having found that the Respondent failed to fulfill its obligations under the Act and attendant regulations, **an Enforcement Notice shall issue against the Respondent** pursuant to Section 58 of the Act and Regulation 16 of the Enforcement Regulations.

G. FINAL DETERMINATION

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

- i. The Respondent is hereby found liable.
- ii. The Respondent to pay the Complainant a sum of **Kenya Shillings Fifty Thousand (KES 50,000)** as compensation.
- iii. An Enforcement Notice to hereby be issued 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 20th day of June 2025.



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER