



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0308 OF 2025

MILLICENT ACHIENG OBOR..... COMPLAINANT

-VERSUS-

**MURANG'A UNIVERSITY
OF TECHNOLOGY..... RESPONDENT**

DETERMINATION

(Pursuant to Sections 8(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 alleges that the Respondent has processed, and continues to process, her personal data (specifically her email address) without a lawful basis, and in contravention of her right to object to such processing, as provided under the Data Protection Act, 2019.

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 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 3rd March, 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations from the Complainant who was 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 12th March, 2025 referenced ODPC/CIE/CON/2/1(128) and served upon the Respondent on 13th March 2025. In the notification of the complaint, the Respondent was informed that if the Complainant's allegations were true, they would be in violation of various sections of the Act. Additionally, the Respondent was asked to provide this Office with the following:
 - i. A response to the allegations made against them by the Complainant;

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- ii. How it obtained the Complainant's personal data;
 - iii. The lawful basis for further processing of the Complainant's personal data
 - iv. Any relevant material or evidence in support of its response.
 - v. Descriptive evidence of how data subjects can exercise their rights
 - vi. Mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant, if any;
 - vii. Any other information they wished the Office to consider.
8. The Office received the Respondent's statement of response *vide* a letter received on 28th March 2025.

D. NATURE OF THE COMPLAINT

9. The complaint alleges that the Complainant's email address was wrongfully subscribed to the Respondent's student mailing system, despite the Complainant not being a student. The Complainant further states that she made numerous requests over several years requesting the cessation of such processing, all of which were ignored.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

10. The Complainant alleges that the Respondent, has been sending her repeated and unsolicited emails over an extended period, falsely implying that she is a student of the institution, whereas she has never been enrolled at the University.
11. She states that she has made several written requests to the Respondent, seeking to be provided with an option to unsubscribe from further communications and for her personal data to be erased from the University's records. Despite these efforts, the Respondent has neither acted on her requests nor acknowledged receipt of the same.
12. She pleads that the violation has persisted for over four years, during which the Respondent continued to process her personal data without a lawful basis and in disregard of her express objections.

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13. The Complainant further alleges that, despite her repeated attempts to engage the Respondent, the University only acknowledged the issue after being served with a formal notification of complaint from the Office.

14. The complainant has attached the following documents to support her complaint:

- i) Printed images from several screenshot emails from the Respondent
- ii) Printed images from several screenshot emails to the Respondent requesting for cessation of processing and/or an opt out mechanism from the emails.

iii) THE RESPONDENT'S RESPONSE

15. The Respondent, responded to the Notification of complaint *via* a letter dated 28th March, 2025.

16. The Respondent states that, following an internal review, it established that the Complainant's email address formed part of the student data it received from the Kenya Universities and Colleges Central Placement Service (KUCCPS) during the 2021 placement cycle.

17. The Respondent asserts that the said email address was linked to an admitted student, one O****o B****n O****g, who had been placed by KUCCPS to pursue a Diploma at Murang'a University of Technology. The details, including the email address in question, were provided as part of the official admissions process.

18. The Respondent acknowledges that while the student in question was officially placed, he never physically reported to the University. Despite this, his email address and phone number remained active in the University's records, without verification of continued association or attendance.

19. The Respondent states that upon receipt of the official complaint from the Office of the Data Protection Commissioner, it promptly removed the Complainant's email address and contact details from its mailing list and internal systems.

20. The Respondent admits that it did not act upon the Complainant's numerous unsubscribe and data removal requests. It attributes this to gaps to its unsubscribe request processing mechanisms and asserts that it has since reviewed and begun automating these processes to ensure timely and effective responses in future.
21. The Respondent further pleads that it is in the process of implementing additional verification measures aimed at ensuring that only students who physically report and activate their university credentials are retained in its database, additionally, that it is in the process of sensitizing its staff on the data minimization principle under applicable data protection laws, with the objective of preventing unnecessary retention of unverified or outdated contact information.

F. INVESTIGATIONS UNDERTAKEN

22. After careful analysis of the adduced evidence on record and the law, the Office established that the Respondent receives student data from the Kenya Universities and Colleges Central Placement Service (KUCCPS) and does not independently verify the accuracy or validity of the personal data received. The Respondent relies on the assumption that the data is accurate by virtue of originating from a government placement agency.
23. That although the Complainant made several requests to have her data removed and the matter rectified, the Respondent acknowledged that these requests were not acted upon. The Respondent admitted in its response to the notification letter that the Complainant's communications were missed.
24. The Office found that while the Respondent indicated that it is working to strengthen its unsubscribe mechanism, the said mechanism was not fully operational at the time of the site visit conducted during the investigation. Additionally, the Respondent has not yet conducted any formal data protection training for its staff. The Respondent, however, expressed its intention to undertake such training in the future.

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G. ISSUES FOR DETERMINATION

25. In light of the above, the complaint, the Respondent's responses and evidence adduced together with the investigations conducted, the following issues fall for determination by this Office:

- i. Whether the Respondent fulfilled its obligations under the Act;
- ii. Whether there was a violation of the Complainant's rights under the Act;
- iii. Whether the Complainant is entitled to any remedies under the Act.

I. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT

26. Section 2 of the Act defines a data controller as a person or entity who, either alone or jointly with others, determines the purpose and means of processing personal data. A data processor is defined as a person or entity that processes personal data on behalf of the data controller.

27. Section 25 of the Act imposes specific obligations on the data controller, including ensuring that personal data is processed lawfully, fairly, and transparently. The data controller must also ensure that personal data is collected for specified, explicit, and legitimate purposes, and is not further processed in a manner incompatible with those purposes.

28. The Respondent states that it received the Complainant's personal data from the Kenya Universities and Colleges Central Placement Service (KUCCPS), the entity mandated with university placements in Kenya, for the purpose of further processing the data in preparation for the enrolment of the placed individual.

29. Given that the Respondent's core functions involve the processing of personal data, it remains, at all material times, subject to and bound by the data protection principles set out under Section 25 (a) (f) and (g) of the Act. It was the Respondent's duty to ensure that personal data is processed in accordance with the right to privacy of the data subject, accurate and, where necessary, kept up to date, with every reasonable

step being taken to ensure that any inaccurate personal data is erased or rectified without delay and kept in a form which identifies the data subjects for no longer than is necessary for the purposes which it was collected.

30. The Respondent in its statement of response dated 28th March 2025 and during the subsequent site visit investigations carried out on 9th April 2025 validated the Complainant's allegation that the Respondent was in receipt of her emails requesting to unsubscribe from its mailing system and to cease further processing of her personal data. However, the Respondent failed to act on these requests. It attributed this failure to gaps in its unsubscribe request handling mechanisms.

31. Section 41 of the Act provides, that every data controller or data processor shall implement appropriate technical and organizational measures which are designed to implement the data protection principles in an effective manner and to integrate necessary safeguards for that purpose into the processing ensuring that, by default, only personal data which is necessary for each specific purpose is processed.

32. Based on the foregoing, it is evident that the Respondent, as a data controller within the meaning of Section 2 of the Data Protection Act, failed to discharge its statutory obligations under Sections 25 and 41 of the Act. Despite receiving the Complainant's personal data from KUCCPS, the Respondent remained fully responsible for ensuring that such data was processed lawfully, fairly, and transparently. Additionally, the Respondent's continued processing of the Complainant's personal data despite multiple unsubscribe requests constitutes a violation of the principles of data minimization, accuracy, and storage limitation as set out under Section 25 of the Act. Furthermore, the failure to implement effective technical and organizational measures to address such requests in a timely and reliable manner is a clear contravention of Section 41 of the Act.

33. The Office therefore finds that the Respondent failed to demonstrate that it fulfilled its obligations as a data controller and processor as per the Act.

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

34. Section 26(c) of the Act provides *inter alia* that a data subject has a right to object to the processing of all or part of their personal data. Further Section 36 of the Act 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, or for the establishment, exercise or defence of a legal claim."
35. Regulation 8 of the Data Protection (General) Regulations 2021 further specifies "that a data Subject may request a data controller or processor not to process all or part of their personal data, for a specified purpose or in a specific manner."
36. The Complainant states that she made multiple requests to the Respondent seeking to unsubscribe from its internal mailing system but did not receive any response. The Respondent acknowledged and validated this position, admitting that it failed to act on the Complainant's requests, and attributed this failure to deficiencies in its technical and organizational measures.
37. It is not in dispute that the Complainant is not, and has never been, a student enrolled in any academic program offered by the Respondent. Yet her email was treated as if it belonged to an enrolled student.
38. The Complainant explicitly exercised her right to object to the processing of her personal data by submitting multiple unsubscribe and data removal requests. The Respondent's continued retention and processing of data it knew to be inaccurate constitutes a direct violation of the Complainant's right under Section 26(c) of the Act, as the processing persisted despite her objection and without lawful justification.
39. Based on the foregoing, the Office finds that the Respondent violated the Complainant's right to object under section 26(c) of the Act.

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

40. 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.
41. As a remedy, the Complainant requested that the Office compel the Respondent to delete her personal data from its systems, databases, and any other records in its possession. She further sought monetary compensation for the prolonged violation of her rights as a data subject
42. In consideration of the complaint, the evidence presented by both the Complainant and the Respondent, and having established that the Respondent failed to fulfil its obligations as per Section 25 and 41 of the Act, and additionally, in respect of the Complainant's rights under Section 26(c) of the Act, it therefore follows that there has been a violation of the Act by the Respondent.
43. 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.
44. 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.
45. Having found that the Respondent failed to demonstrate that it fulfilled its obligations under Sections 25 and 41 of the Act and further failed to establish the necessity for processing the Complainant's personal data; and further having found that its actions

amounted to a violation of the Complainant's rights under Sections 26(c) of the Act, the Respondent is hereby directed to compensate the Complainant in the sum of **Kshs. 50,000/= (Fifty Thousand Shillings Only)**.

46. Furthermore, Section 58 of the Act as read together with Regulations 14 and 16 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 further contemplates, as a remedy, the issuance of enforcement notices against an entity that has failed or is failing to comply with any provisions of the Act and the attendant regulations thereto.

47. Having found that the Respondent did not fulfill its obligations as a data controller and processor as provided for under the Act, the Office hereby orders for an enforcement notice to be issued against the Respondent.

48. In so doing, this Office takes into account the nature, extent and gravity of violation with regard to unlawful processing of the Complainant's personal data and the conduct of the Respondent.

H. FINAL DETERMINATION

49. In the ultimate, the Data Commissioner makes the following final determination;

- i. The Respondent is hereby found liable.
- ii. The Respondent is ordered to compensate the Complainant **(KES. 50,000) Fifty Thousand Shillings Only**.
- iii. An **Enforcement Notice** to issue upon 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 31st day of May 2025



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER



