



## OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1391 OF 2025

ESTHER GITAU.....COMPLAINANT

**-VERSUS-**

SHREE SWAMINARAYAN HOSPITAL.....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 the Respondent shared another patient's medical data with her.

#### **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 (hereinafter 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 20<sup>th</sup> September 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 23<sup>rd</sup> October 2025, referenced ODPC/CONF/1/5 VOL 1 (772). 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 sections of the Act. Further, among other things, the Respondent was asked to provide this Office with the following:
  - a. A response to the allegation made against them by the Complainant;
  - b. Any relevant materials or evidence in support of the response;
  - c. The lawful basis relied upon to process the complainant's personal data;
  - d. Demonstration of the Respondent's level of compliance with the principles of data protection as set out in section 25 of the Data Protection Act;
  - e. Demonstration by way of written statement of the Respondent's level of compliance with the requirements under the at and the regulations.

f. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant.

8. The Respondent responded to the allegations *vide* letter dated 21<sup>st</sup> November 2025.

#### **D. NATURE OF THE COMPLAINT**

##### **i. THE COMPLAINANTS' CASE**

9. The Complainant alleged that having gone to the Respondent's facility for medical consultation and laboratory tests, the Respondent workers sent her laboratory results that were not hers. That the laboratory results sent to her belonged to another person, unknown to her.

##### **THE RESPONDENT'S RESPONSE**

10. The Respondent stated that, the complainant's sample collected had been properly labelled, processed, and securely stored at all material times. They indicated that the Complainant's personal data and biological sample were never accessed by any unauthorized individual. They explained that the inconsistency she observed resulted from a clerical or routing error at the communication stage, during which the wrong report preview was inadvertently attached to the email.

11. The Respondent expressed regret for the inconvenience caused to the Complainant and acknowledged the value of the incident as an opportunity to further strengthen internal safeguards. They stated that the matter involved only an administrative mismatch, not unauthorized access or disclosure, and affirmed their commitment to continued cooperation with the Office and adherence to the standards of confidentiality, accuracy, integrity, and accountability required under the Data Protection Act.

#### **E. SUMMARY OF EVIDENCE ADDUCED**

##### **I. THE COMPLAINANT'S EVIDENCE**

12. To support her complaint, the Complainant produced the inaccurate laboratory results sent to her.

## II. THE RESPONDENT'S EVIDENCE

13. Apart from the response to the notification letter, the Respondent did not adduce any other evidence.

### F. ISSUES FOR DETERMINATION

14. 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 processed the patients' health data in accordance with the principles of Data Protection; and
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

### I. WHETHER THE RESPONDENT PROCESSED THE PATIENTS' HEALTH DATA IN ACCORDANCE WITH THE PRINCIPLES OF DATA PROTECTION.

15. The Complainant contended that, having gone to the Respondent's facility for medical consultation and laboratory tests, the Respondent's employees sent her laboratory results that were not hers. The laboratory results sent to her belonged to another person, unknown to her.

16. The Respondent admitted that it sent the Complainant inaccurate laboratory test results. They stated that the inconsistency observed by the Complainant resulted from a clerical or routing error at the communication stage, during which the wrong report preview was inadvertently attached to the email.

17. Section 2 of the Act defines **health data** to mean 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. The same section further defines processing to mean any operation or sets of operations which is performed on personal data or on sets of personal data whether or not by automated means.

18. Section 2 of the Act further defines sensitive personal data to mean data revealing the natural person's race, health status, ethnic social origin, genetic data, biometric data, property details, etc.

19. Section 25 of the Act provides for principles of data protection. It provides:

*"25. Principles of data protection*

*Every data controller or data processor shall ensure that personal data is-*

- (a) processed in accordance with the right to privacy of the data subject;*
- (b) processed lawfully, fairly, and in a transparent manner in relation to any data subject;*
- (c) collected for explicit, specified, and legitimate purposes and not further processed in a manner incompatible with those purposes;*
- (d) adequate, relevant, limited to what is necessary in relation to the purposes for which it is processed;*
- (e) collected only where a valid explanation is provided whenever information relating to family or private affairs is required;*
- (f) 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;*
- (g) kept in a form which identifies the data subjects for no longer than is necessary for the purposes which it was collected; and*
- (h) not transferred outside Kenya, unless there is proof of adequate data protection safeguards or consent from the data subject.*

20. Section 44 of the Act provides for the processing of sensitive personal data. It states that no category of sensitive personal data shall be processed unless Section 25 applies to the processing.

21. Section 46 (1) of the Act specifically provides for personal data relating to health. It provides that personal data relating to the health of a data subject may only be processed:-

- a) By or under the responsibility of a health care provider; or
- b) By a person subject to the obligation of professional secrecy under any law.

22. From the above provisions of the law and in light of the complaint, it is evident that at all material times when the Respondent's employees were processing the patient's laboratory test results, they were processing sensitive personal data.
23. In light of Section 44 above, the Respondent was required to process the Complainant's data in accordance with Section 25 of the Act. Specifically, they were mandated to process the same accurately.
24. From this Office's investigations, the evidence adduced, and the Respondent's admission, it is evident that the Complainant was sent to laboratory test results that were not hers'. The Respondent attributed the inaccuracy to a clerical or routing error at the communication stage, during which the wrong report preview was inadvertently attached to the email.
25. As such the Office finds that the Respondent violated Sections 25(a) & (f) as read with Section 44 of the Act to the extent that it did not send the Complainant accurate laboratory test results. It also abrogated its responsibility over the Complainant's health data as envisioned under Section 46 of the Act.

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

26. Under 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.
27. Having considered the merits of the Complaint, the evidence adduced by both the Complainant and the Respondent, and having found that the Respondent did not process the third party's health data per the law, it, therefore, follows that there has been a violation of the Act by the Respondent. The Respondent did not process the third party's personal data in accordance with Sections 25(a) and 25(d) of the Act.
28. Section 58 of the Act as read together with Regulations 14 and 16 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021,

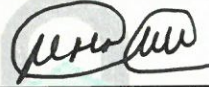
contemplates, as a remedy, the issuance of enforcement notices against an entity that has failed or is failing to comply with any provisions of the Act and the attendant regulations thereto. On that note, we are guided accordingly, and an Enforcement Notice hereby ensues as against the Respondent.

**G. FINAL DETERMINATION**

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

- i. The Respondent is hereby found liable.
- ii. An Enforcement Notice is hereby issued against the Respondent.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

**DATED** at **NAIROBI** this 19<sup>th</sup> day of December 2025.



**IMMACULATE KASSAIT, SC, MBS**  
**DATA COMMISSIONER**

