



## OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1551 OF 2025

**DORCAS NTINYARI SAVINI.....COMPLAINANT**

**-VERSUS-**

**MEGAHEALTH INSURANCE BROKERS.....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 processed and/or continues to process her personal data for marketing purposes without her express consent and/or any other 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 '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

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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 2<sup>nd</sup> October 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations by 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 31<sup>st</sup> October, 2025 referenced ODPC/CIE/CON/2/1(822). 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:
  - a) A response to the allegations made by the Complainant;
  - b) A contact person who can provide further information;
  - c) Any relevant materials or evidence in support of the statement of response above;
  - d) Details of how the Complainant's personal data was obtained;
  - e) Whether the Complainant was notified and gave express consent for the use of her personal data for commercial purposes;

- f) The lawful basis for denying the complainant her right to erasure;
- g) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant, if any; and
- h) Any other information.

8. This determination is therefore pursuant to the provisions of Regulation 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021.

#### **D. NATURE OF THE COMPLAINTS**

9. The Complainant alleges that the Respondent persistently contacted her through unsolicited promotional emails, notwithstanding the fact that she is not a customer of the Respondent, and without having given any prior consent for such communication.

#### **E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED**

##### **i. THE COMPLAINANT'S CASE**

10. The Complainant alleges that for a definite and prolonged period of time dating back to on or about the year 2020, she has been receiving unsolicited marketing emails from Be\*\*\*\*\*e N\*\*\*e, using the email address [b\\*\\*\\*\\*\\*e@megahealth-insurance.com](mailto:b*****e@megahealth-insurance.com) despite having no relationship with the company. She asserts that she is not subscribed nor has she subscribed to the company's services, never consented to the collection or processing of her personal data, and was neither a past, current, nor prospective client.

11. She states that on 12<sup>th</sup> June 2025, she wrote to the said individual seeking clarification on the source of her email address, requesting cessation of marketing communications, deletion of her data, and evidence of erasure. She stated that the company failed to respond to her inquiry, failed to stop the marketing emails, failed to delete her data, failed to provide evidence of erasure, and continued sending unsolicited communications.

12. The Complainant contends that the Respondent's conduct amounted to unlawful processing of personal data and denial of her rights as a data subject.

13. She claims that she has suffered actual and ongoing harm through continuous unauthorized processing of her personal data for over five years, causing distress, inconvenience, and offence, with each communication constituting a fresh violation. She cited recent email subject lines targeting legal professionals as evidence that the processing was continuous and ongoing.

14. As evidence, the Complainant submitted –

- i. Multiple promotional emails from the Respondent.
- ii. Copies of correspondences between herself and the Respondent

**ii. THE RESPONDENT'S RESPONSE**

15. In its statement of response, the Respondent denied the allegations of unlawful collection or use of the Complainant's personal data. It stated that it maintained an on-the-ground sales and marketing team that routinely visited office premises and engaged with prospective clients in the ordinary course of business. That during such engagements, individuals voluntarily provide their contact details for purposes of receiving insurance quotations or product information. They asserted that it was the company's standard practice that such data was provided consensually and processed in accordance with its internal data protection protocols.

16. Additionally, the Respondent stated that it received the Complainant's deletion request on 12<sup>th</sup> June 2025 and it took immediate steps to remove the Complainant's email address and any associated records from all mailing lists, internal databases, and active systems. The Respondent further stated, on instructions, that the Complainant's personal data had been completely erased from its servers.

17. The Respondent stated that it relied on lawful bases for processing personal data, namely consent and legitimate business interest. It explained that data collected by its field sales team was voluntarily provided by data subjects for the specific purpose of receiving insurance-related information, and that it processed minimal contact information to facilitate quotation requests and product follow-ups in line with the nature of its services.

18. The Respondent further stated that, in compliance with the Data Protection Act, 2019, and in an effort to mitigate the matter, it had permanently deleted the Complainant's personal data from all systems. It also indicated that it had commenced a review of its internal data handling and consent-capture procedures to strengthen compliance, and that additional refresher training on data protection standards had been scheduled for its field sales team.

19. Additionally, it stated that the Complainant did not raise any complaint or request for clarification with the company regarding the processing of her personal data by the agents in question prior to lodging the complaint. Moreover, that any attempt to engage with the Complainant directly in order to clarify and address his concerns were futile.

#### **F. ISSUES FOR DETERMINATION**

20. 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; and
- iii. Whether the Complainant is entitled to any remedies under the Act.

#### **I. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT**

21. In considering this issue, the Office will examine the following questions –

- a. Was the Complainant duly notified?
- b. Was there was unlawful processing of the Complainant's personal data?
- c. Did the Complainant consent to the use of her personal data for direct marketing purposes?

##### *Was the Complainant duly notified?*

22. Section 29 of the Act provides for the duty to notify. It states, that a data controller or data processor shall, before collecting personal data, in so far as practicable, inform the data subject.

23. In its statement of response, the Respondent maintains that it operates an on-the-ground sales and marketing team which routinely visits office premises and engages prospective clients in the ordinary course of business. It asserts that, during these engagements, individuals voluntarily provide their contact details for the purpose of receiving insurance quotations or related product information.
24. The Respondent further avers that the provision of such personal data is consensual and forms part of its standard business practice, and that any personal data so obtained is processed in accordance with its internal data protection policies and protocols.
25. Notwithstanding these assertions, the Respondent did not furnish any documentary or other evidentiary material to substantiate its claims or to demonstrate that the collection and subsequent processing of the Complainant's personal data was undertaken voluntarily, with the Complainant's knowledge and informed consent.
26. The Office cannot, therefore, reasonably infer that the Complainant was duly informed, in accordance with Section 29 of the Act, prior to the collection and processing of her personal data.

*Was there was unlawful processing of the Complainant's personal data?*

27. Section 28(1) of the Act provides; a data controller or data processor shall collect personal data directly from the data subject.
28. Section 37(1) and (2) provides; a person shall not use, for commercial purposes, personal data obtained pursuant to the provisions of this Act unless the person has sought and obtained express consent from a data subject; or is authorized to do so under any written law and the data subject has been informed of such use when collecting the data from the data subject.
29. The Respondent submits in verbatim that it relied on consent and legitimate business interest as the lawful bases for processing the Complainant's personal data. Additionally, that the data collected by its field sales team was voluntarily provided by data subjects for the specific purpose of receiving insurance-related information, and

that it processed minimal contact information to facilitate quotation requests and product follow-ups in line with the nature of its services.

30. While the Respondent contends that it relied on both consent and legitimate business interest as lawful bases for processing personal data, the Act requires that, for each specific processing activity, a data controller or data processor must clearly identify and rely on a single, appropriate lawful basis. Lawful bases are not interchangeable or cumulative, and a data controller cannot oscillate between or simultaneously invoke multiple bases to justify the same processing operation.

31. Furthermore, in the absence of demonstrable evidence establishing the specific lawful basis relied upon for the processing of the Complainant's personal data for commercial purposes, the Office finds that such processing undertaken was therefore unlawful.

*Did the Complainant consent to the use of his personal data for marketing purposes?*

32. Section 37(1) of the Act states that, *"a person shall not use, for commercial purposes, personal data obtained pursuant to the provisions of this Act unless the person –*

*a) Has sought and obtained express consent from a data subject; or*

*b) Is authorised to do so under any written law and the data subject has been informed of such use when collecting the data from the data subject."*

33. Valid consent is a product of conscious decision-making and requires affirmative action. It should be demonstrable and capable of being proven.

34. Section 30 (1) (a) of the Act provides that a data controller or data processor shall not process personal data unless the data subject consents to the processing for one or more specified purposes.

35. The Act goes further to state the conditions of consent. It states as follows concerning the conditions of consent: -

*32. Conditions of consent*

*(1) A data controller or data processor shall bear the burden of proof for establishing a data subject's consent to the processing of their personal data for a specified purpose.*

*(2) Unless otherwise provided under this Act, a data subject shall have the right to withdraw consent at any time.*

*(3) the withdrawal of consent under sub-section(2) shall not affect the lawfulness of processing based on prior consent before its withdrawal.*

*(4) In determining whether consent was freely given, account shall be taken of whether, among others, the performance of a contract, including the provision of a service, is conditional on the consent of the processing of personal data that is not necessary for the performance of that contract. (emphasis ours)*

36. Regulation 14(1) of the General Regulations provides the interpretation of 'commercial purposes' and provides that for the purposes of Section 37(1) of the Act, *a data controller or data processor shall be considered to use personal data for commercial purposes where personal data of a data subject is used to advance commercial or economic interests, including inducing another person to buy, rent, lease, join, subscribe to, provide or exchange products, property, information or services, or enabling or effecting directly or indirectly, a commercial transaction.*

37. By constantly sending promotional messages to the Complainant's email to market its products to her, the Respondent was processing the Complainant's personal data for commercial purposes as defined above.

38. Regulation 15 of the General Regulations sets out the permitted commercial use of personal data and states that, *"a data controller or data processor may use personal data, other than sensitive personal data, concerning a data subject for the purpose of direct marketing where—*

*a) the data controller or data processor has collected the personal data from the data subject;*

- b) a data subject is notified that direct marketing is one of the purposes for which personal data is collected;*
- c) the data subject has consented to the use or disclosure of the personal data for the purpose of direct marketing;*
- d) the data controller or data processor provides a simplified opt out mechanism for the data subject to request not to receive direct marketing communications; or*
- e) the data subject has not made an opt out request.”*

39. It is trite that the burden of proof to establish that valid consent was obtained for the processing of a data subject's personal data lies with the data controller. Accordingly, it was incumbent upon the Respondent to demonstrate that it had collected the Complainant's personal data lawfully; duly notified her that direct marketing was among the purposes for which the data was being collected and obtained her express consent prior to contacting her for marketing purposes. The Respondent failed to discharge this statutory obligation, having not furnished any credible evidence to demonstrate that the Complainant's consent was obtained in accordance with the Act.

40. Based on the foregoing, the Office finds that the Respondent failed to fulfill its obligations under the Act.

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

41. Section 26(a) of the Act guarantees a data subject the right to be informed of the purposes for which their personal data is collected and used. By failing to inform the Complainant, at the point of collection, of the specific use to which her personal data would be put, the Respondent infringed the Complainant's right to be informed under the Act.

42. From the above, this Office finds that the Complainant's rights under Sections 26(a) of the Act were violated by the Respondent.

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

43. 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.
44. As a remedy, the Complainant sought the Respondent to cease and desist from contacting her, delete her personal data from the Respondent's systems, databases and any other record and monetary compensation for the violation of her right as a data subject.
45. Section 65(1) of the Act provides, that a person who suffers damage by reason of a contravention of a requirement of this Act is entitled to compensation for that damage from the data controller or the data processor. Section 65(2) provides, a data controller involved in processing of personal data is liable for any damage caused by the processing.
46. Section 65(4) of the Act provides that "damage" includes financial loss and damage not involving financial loss, including distress.
47. Having found that the Respondent Unlawfully processed the Complainant's personal data, failed to comply with the principles of data protection while processing the Complainant's personal data, violated the Complainant's right to be informed, processed the Complainant's personal data for direct marketing and failed to fulfil the duty to notify, it then follows that the Complainant is entitled to compensation. The Respondent is hereby directed to compensate the Complainant **KES 412,000 (Four Hundred and Twelve Thousand, Five Hundred Shillings Only)**.
48. In so doing, this Office takes into account the nature and extent of violation with regard to unlawful processing of the Complainant's personal data and the conduct of the Respondent.

*Handwritten initials*

## G. FINAL DETERMINATION

49. In consideration of all the facts of the complaints, the evidence tendered and the investigations conducted, the Data Commissioner makes the following determination:

- i. The Respondent is hereby found liable.
- ii. The Respondent is ordered to compensate the Complainant **KES 412,500 (Four Hundred and Twelve Thousand, Five Hundred Only)**.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

**DATED** at **NAIROBI** this 13<sup>th</sup> day of January 2026



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

