



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1597 OF 2025

JULIAN ROWA

(SUING ON BEHALF OF A MINOR AJR).....COMPLAINANT

-VERSUS-

THE NAIROBI ACADEMY.....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 alleges that the Respondent shared and publicly disclosed his child’s personal data without his consent 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

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 21st October, 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations from the Complainant who is the parent of 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 30th October, 2025 referenced ODPC/CIE/CON/2/1(786). 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 detailed response to the allegations made by the Complainant;
 - b) A contact person who can provide further details;
 - c) Any relevant materials or evidence in support of the statement of response above;
 - d) Detailed procedure on how data subjects can exercise their data protection rights;
 - e) Lawful basis relied upon to process the Complainant's personal data;

- f) Data processing agreement with Nation Media Group;
- g) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant, if any;
- h) Any other relevant 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 COMPLAINT

9. The Complainant alleges that the Respondent unlawfully disclosed and caused the publication of his child's personal data specifically the child's name and examination results in a newspaper segment appearing under the Advertising Feature section of the Daily Nation, without the Complainant's consent and in the absence of any other lawful basis thereof.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANTS' CASE

10. The Complainant alleges that the Respondent has, on several occasions, unlawfully shared, disclosed, and caused to be published his child's personal data, specifically the minor's name and examination results.

11. He states that the first instance of such disclosure occurred in the year 2023. Upon raising the issue with the Respondent at that time, the Respondent acknowledged the concern and assured the Complainant that it would neither share nor publicly disclose the minor's personal data without obtaining his prior consent.

12. Notwithstanding the foregoing assurance, the Respondent is alleged to have subsequently shared, disclosed, and caused the publication of the minor's name(s) and examination results in the *Daily Nation* newspaper of Thursday, 21 August 2025, under the *Advertising Feature* section.

13. The Complainant contends that the said processing of the minor's personal data was unlawful and was undertaken for the commercial benefit of the Respondent, in the absence of consent or any other lawful basis as required under the Act.

14. In support of his allegations, the Complainant furnished the following evidence:

- i. Extracts from the *Daily Nation* newspaper dated Thursday, 21 August 2025, including the front page and page 17, showing the *Advertising Feature* in which the minor's personal data is published; and
- ii. A WhatsApp conversation extract between the Complainant and a person identified as S****u, an officer or representative of the Respondent, relating to the prior disclosure and assurances given.

ii. THE RESPONDENT'S RESPONSE

15. The Respondent states that they acknowledge the seriousness of the concerns raised by the Complainant, particularly the publication of a minor's identifiable examination results in the *Daily Nation* newspaper, and confirms that they reviewed the affidavit, complaint file, and prior correspondence between the Complainant and its staff. The Respondent avers that the concerns relating to the handling of the learner's personal data are legitimate.

16. The Respondent pleads that, following an internal review, it was established that the minor's individual examination results were included in material shared with Nation Media Group as part of a general academic performance update, and that no express parental consent was obtained prior to the disclosure. They further aver that while the publication was not intended for commercial gain, the disclosure nonetheless constituted processing of personal data.

17. The Respondent admits that the Complainant's subsequent enquiries were not addressed in a timely manner and expresses regret for the delay. They attribute the incident to lapses in their internal procedures governing the disclosure of learners' personal data.

18. The Respondent acknowledges that under section 33 of the Act, and the applicable provisions of the Data Protection (General) Regulations, children's personal data

requires special protection, including the requirement for parental consent, transparency, and processing in the best interests of the child. They concede that the failure to obtain specific, informed parental consent constituted a deviation from these legal obligations.

19. The Respondent asserts that there was no intention to profile, market, or commercially exploit the minor's personal data, but concedes that compliance obligations under the law apply irrespective of intent. It further claims that it has taken steps to mitigate the risk of recurrence through internal reforms and enhanced safeguards.
20. The Respondent assert that they undertake to implement corrective and preventive measures, including issuing a written apology, requesting takedown of the published results, halting external disclosure of learner-level data without consent, introducing a mandatory parental consent framework, restricting publications to aggregate data, strengthening the role of the Data Protection Officer, and conducting regular staff training and audits. It accordingly requests that the Office consider these measures and resolve the matter through amicable dispute resolution under the applicable regulations.

F. ISSUES FOR DETERMINATION

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

- i. Whether there was unlawful processing of the Minor's personal data for commercial purposes.
- ii. Whether there was a violation of the Minor's rights.
- iii. Whether the Complainant is entitled to any remedies under the Act.

I. WHETHER THERE WAS UNLAWFUL PROCESSING OF THE MINOR'S PERSONAL DATA FOR COMMERCIAL PURPOSE

22. Pursuant to Section 2 of the Act, personal data means any information relating to an identified or identifiable natural person. The minor's name is personal data. Additionally, combined with contextual details such as the school attended and the

specific examination results, the minor is identifiable, meeting the definition of personal data under the Act.

23. 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 or the processing is necessary for the purposes set out in Section 30 (1)(b) of the Act.

24. Section 33(1) of the Act provides, that every data controller or data processor shall not process personal data relating to a child unless consent is given by the child's parent or guardian and the processing is in such a manner that protects and advances the rights and best interests of the child. [Emphasis]

25. Moreover, Section 37 (1) of the Act provides for commercial use of data and states, "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 the 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."

26. Regulation 14 (1) of the Data Protection (General) Regulations 2021 further elaborates Section 37 of the Act as follows: -

14. Interpretation of commercial purposes

(1) for the purposes of section 37 (1) of the Act, a data controller or 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.

27. It is undisputed that the Respondent disclosed the minor's personal data to a third party, which resulted in the publication of the minor's name and examination results in a national daily newspaper. The data was published under the newspaper's "Advertising Feature" section, demonstrating that the disclosure was promotional in nature rather than editorial.

28. The use of the minor's identifiable academic information in this context underscores that the personal data was processed for purposes extending beyond academic administration, specifically to advance the Respondent's commercial and economic interests by promoting its institution to prospective clients.
29. The processing of a minor's personal data for such commercial purposes required the prior express parental consent. The Respondent has admitted that no such consent was obtained before the disclosure and publication of the minor's personal data.
30. In view of the foregoing, this Office therefore finds that as far as issue (i) is concerned, the Respondent processed the minor's personal data for commercial purpose without consent.

II. WHETHER THERE WAS A VIOLATION OF THE MINOR'S RIGHTS

31. Section 26(2) of the Act provides that a data subject has a right to object to the processing of all or part of their personal data.
32. Pursuant to Section 27(a) of the Act, a right conferred on a data subject may be exercised, where the data subject is minor, by a person who has parental authority or by a guardian.
33. Section 36 of the Act provides 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 defense of a legal claim.
34. The evidence on record demonstrates that prior to the impugned publication, the Complainant had expressly exercised his statutory right to object to the processing of his child's personal data. Through documented correspondence, the Complainant objected to any future disclosure or publication of the minor's examination results or any other personal data. The Respondent acknowledged this objection and expressly assured the Complainant that it would not disclose or publish the minor's personal data going forward.
35. Notwithstanding this clear objection and assurance, the Respondent subsequently proceeded to share and disclose the minor's personal data to a third party, which

disclosure resulted in the publication of the minor's name and individual examination results in the Daily Nation newspaper. This conduct occurred after the Complainant had exercised his right to object and in direct contravention of the Respondent's own undertaking.

36. Once the right to object had been exercised, the Respondent was under a legal obligation to cease the disputed processing unless it could demonstrate compelling legitimate grounds overriding the rights and best interests of the data subject, particularly given that the data subject was a minor. The Respondent has not demonstrated the existence of any such overriding grounds. To the contrary, the Respondent has admitted that it did not obtain parental consent and has not identified any statutory or public interest basis justifying the disclosure.
37. Further, having previously acknowledged the objection and undertaken not to process the minor's personal data in this manner, the Respondent was required to ensure that no further sharing occurred and to implement appropriate internal controls to prevent disclosure to third parties. Its failure to do so directly enabled the unlawful publication of the minor's personal data.
38. The Respondent's actions therefore constitute a deliberate and aggravated violation. Personal data was disclosed despite a prior objection, despite express assurances, and without any lawful basis. This breach is compounded by the fact that the data related to a minor and was disseminated through a nationwide newspaper, resulting in widespread and irreversible public exposure.
39. Accordingly, the Office finds that the Respondent violated the Complainant's right to object to processing of their personal data.

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 prays for an award of monetary compensation to redress the unlawful processing of his child's personal data.

42. 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.

43. Section 65(4) of the Act provides that "damage" includes financial loss and damage not involving financial loss, including distress. Having established that the Respondent failed unlawfully processed a minor's personal data for commercial purposes and violated the Complainant's right to object, the Respondent is hereby directed to pay the Complainant the sum of **Kenya Shillings Six Hundred and Thirty Seven Thousand Five Hundred. (KES 637,500)** as compensation.

44. In so doing, this Office takes into account the nature and extent of violation, the Respondent's previous conduct and the scope of publication of the personal data

G. FINAL DETERMINATION

45. 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 **Kenya Shillings Six Hundred and Thirty Seven Thousand Five Hundred. (KES 637,500)**
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at NAIROBI this 19th day of January 2026



IMMACULATE KASSAIT, SC, MBS
DATA COMMISSIONER

