



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1762 OF 2023

BEATRICE AYONJO.....COMPLAINANT

-VERSUS-

QUEST HOLDINGS LIMITED.....RESPONDENT

DETERMINATION

(Pursuant to Section 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 Office received a complaint on 26th September 2023 against the Respondent. The allegations were that the Respondent was unlawfully disclosing the Complainant's loan details to her clients without her knowledge yet she was paying her loan.

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 (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 26th September 2023. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 (hereinafter the 'Enforcement Regulations') from the Complainant who is the aggrieved data subject.
7. Quest Holdings Limited (hereinafter the 'Respondent') is a company which provides professional receivables management solutions for financial and commercial markets.
8. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondent of the complaint filed against it *via* a letter dated 17th October, 2023 referenced ODPC/CONF/1/5 VOL 1 (499). In the notification of the complaint, the Respondent was to provide: -
 - 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 share the Complainant's loan details to a third party without her consent;

- d. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant including adoption of the Alternative Dispute Resolution process; and
 - e. Demonstration of how its institution balances the rights and freedoms of the data subject vis-à-vis its internal policies and procedures.
9. The Respondent responded to the notifications of complaint *via* a letter dated 31st October 2023.
10. This determination is therefore as a result of analysis of the complaint as received and the response from the Respondent.

D. NATURE OF THE COMPLAINT

11. The Complainant alleged that the Respondent had been sending the Complainant's loan details to an unauthorized third party without her consent.

E. SUMMARY OF EVIDENCE ADDUCED

i. THE COMPLAINANTS' CASE

12. The Complainant provided screenshots of messages regarding the Respondent sending her loan details to a third party allegedly without her consent.

ii. THE RESPONDENT'S RESPONSE

13. In its response, the Respondent acknowledged that the Complainant is one of their customers under their management on behalf of another entity and that they have been trying to reach the Complainant since September 2022 with an aim of debt recovery although there was no much progress because the Complainant was not making regular payments.
14. The Respondent claimed that the Complainant invited her colleague to a call they made to her in pursuit of the debt and gave the details herself to a third party.
15. The Respondent stated that they are a registered data controller and data processor hence are aware of personal data and privacy rights.

16. The Respondent indicated that the Complainant reached out to them using her employer's phone number and that they regret sending the text to that number.

17. The Respondent averred that they usually conduct periodic trainings to their staff on personal data protection to ensure they are aligned to data privacy expectations. They attached a training session that was done in the past which was an email invite sent to various persons on 13th October 2022.

18. The Respondent also stated that they have in place a data privacy policy that guides the conduct of all their employees in the organization when handling sensitive personal data. The Respondent attached the said policy as proof of the same.

F. ISSUES FOR DETERMINATION

19. The following issues fall for determination by this Office:

- i. Whether the Complainant's personal data was processed in accordance with the Act; and
- ii. Whether the Complainants are entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THE COMPLAINANT'S PERSONAL DATA WAS PROCESSED IN ACCORDANCE WITH THE ACT

20. It is paramount to define personal data in order to ascertain whether the Respondent processed the Complainant's personal data in accordance with the Act.

21. The Act defines a data subject as "*an identified or identifiable natural person who is the subject of personal data*". On the other hand, identifiable natural person under the Act means "*a person who can be identified directly or indirectly by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, psychological, genetic, mental, economic, cultural or social or social identity*". Additionally, Personal data is then defined as "*any information relating to an identified or identifiable natural person*".

22. The question to answer at this juncture therefore is whether the Complainant's loan details fall within the definition of personal data under the Act.
23. The Respondent sent a message to the Complainant's employer that this Office shall anonymize as follows:
- "Dear Beatrice Ayonjo, Pay xxxx for your Axxx Kenya debt on 2023-08-26 as agreed..."***
24. From the foregoing, the text message has the Complainant's name and her loan details which, as per the definition of the Act are categorised as information that related to the Complainant as a data subject.
25. The Act defines processing as *"any operation or sets or operations which is performed on personal data or on sets of personal data whether or not by automated means such as: - (a) collection, recording, organization, structuring; (b) storage, adaptation or alteration; (c) retrieval, consultation or use; (d) disclosure by transmission, dissemination, or otherwise making available; or (e) alignment or combination, restriction, erasure or destruction."*
26. As per the definition of processing, it is clear that the Respondent was processing the Complainant's personal data especially because she was one of its customers according to their response.
27. The question that arises after confirming whether the said information is personal data is whether the Complainant's personal data was lawfully processed.
28. Section 30 of the Act gives the basis for lawful processing of personal data and states that *"a data controller or 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 reasons laid down in Section 30 (1) (b)"*. Consequently, the Respondent did not prove that they had any valid reasons or consent from the Complainant under Section 30 to process her personal data.
29. Similarly, the Respondent admitted to calling the Complainant through her employer's phone number which was **not listed** as one of the emergency contact, referee nor guarantor when the Complainant was applying for her loan.

30. Therefore, this Office finds that the Respondent did not process the Complainant's personal data in accordance with the provisions of the Act as elaborated above.

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

31. 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.

32. Having considered the merits of the complaint and the evidence adduced by both parties, and having found that the Respondent did not process the Complainant's personal data in accordance with the Act, this Office finds that there was a violation of the Complainant's rights by the Respondent.

33. 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.

34. 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.

35. Therefore, as a result of the Respondent's infringement of the Complainant's rights, the Respondent is hereby ordered to compensate the Complainant **Kshs. 200,000 (Two Hundred Thousand Shillings only)** for the unlawful processing of the Complainant's personal data.

36. Further, Section 58 of the Act as read together with Regulations 14 and 16 of the Enforcement Regulations, 2021 provides for issuance of an enforcement notice against an entity that has failed or is failing to comply with any provisions of the Act and the attendant regulations thereto.

37. In the ultimate, an Enforcement Notice shall be issued against the Respondent for failing to adhere to the lawful processing of the Complainant's personal data.

G. FINAL DETERMINATION

38. The Data Commissioner therefore makes the following final determination;

- i. The Respondent is hereby found liable for unlawfully processing of the Complainant's personal data;
- ii. The Respondent is hereby ordered to compensate the Complainant **Kshs. 200,000 (Two Hundred Thousand Shillings only)**
- iii. An Enforcement Notice be and is hereby issued against 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 15th day of December 2023.



**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**

