



**OFFICE OF THE DATA PROTECTION
COMMISSIONER**

COMPLAINTS MANAGEMENT MANUAL



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1. INTRODUCTION

The Office of the Data Protection Commissioner (herein referred to as 'the Office' or 'ODPC') is a State Office in accordance with Article 260 (q) of the Constitution. The Office was established under Section 5(1) of the Data Protection Act No. 24 of 2019 (herein referred to as 'the Act'). The Act was introduced to give effect to Article 31(c) and (d) of the Constitution.

1.1 Mandate of The Office

The mandate of the Office of the Data Protection Commissioner derived from the Act and includes, inter alia:

- (a) regulate the processing of personal data;
- (b) ensure that the processing of personal data of a data subject is guided by the principles set out in section 25 of the Act;
- (c) protect the right to privacy of individuals resident in Kenya;
- (d) establish the legal and institutional mechanism to protect personal data; and
- (e) provide data subjects with rights and remedies to protect their personal data from processing that is not in accordance with the Act.

1.2 Vision

To enhance public trust and be an effective personal data protection regulator.

1.3 Mission

Safeguarding data protection rights through provision of oversight, public awareness and promotion of self-regulation.

1.4 Core Values

- (a) To uphold Values of Public Service as set out in Article 10, and in Chapter Six of our Constitution;
- (b) To act lawfully consistent with our Constitution, and within duties and responsibilities set out in the Data Protection Act 2019;
- (c) Be consultative in style, transparent and responsive to all stakeholders;
- (d) To observe the highest standards of impartiality, integrity and objectivity in leading data processing business while maintaining its independence at all times;
- (e) To cause to have in place effective systems of internal controls for effective economical and proper performance of the functions of the Office.

1.5 The Manual

The aim of this complaints handling manual is three-fold:

- a) Provide a step-by-step simplified guide to promote efficiency and effectiveness in complaint's management at the Office.
- b) Provide clarity to improve management of complaints received at all levels commencing at point of lodging complaint, to preliminary enquiries level and transmission to further investigations, to resolving complaints.
- c) Offer fair and better-quality coordinated service in managing complaints at the Office.

The Complaints Management Procedure is based and founded on basic values and principles of fairness, accessibility, efficiency, responsiveness, confidentiality and flexibility. In handling complaints, the ODPC shall be customer focused, maintain confidentiality and be accountable and transparent.

2. COMPLAINTS MANAGEMENT PROCEDURES

2.1 Scope

The Office has the mandate under Section 8(1)(f) of the Act to receive and investigate any complaint by any person on infringements of the rights under the Act. In this regard, the Office is also empowered under Section 9(1)(a) of the Act to conduct investigations on its own initiative. To this end, the Office can issue summons to a witness for the purposes of investigation pursuant to Section 9(1)(a) of the Act.

The Data Protection Act provides for the receipt and investigation of any complaint by any person on infringements of the rights under the Data Protection Act by the Office of the Data Protection Commissioner. This complaints management manual will provide guidance on complaints management process focusing on inquiry or preliminary investigation only.

2.2 Guiding Principles

An effective complaints management system must be modelled on principles of fairness, accessibility, responsiveness, efficiency and integration within the main mandate of ODPC.

Specifically, the management of complaints shall be guided by values and principles below:

- i. The diversity of the people of Kenya
- ii. Impartiality and gender equity

- iii. All treaties ratified by Kenya regionally and internationally;
- iv. All commitments signed by Kenya internationally and regionally;
- v. The rules of natural justice;
- vi. Fairness; and
- vii. Accountability.

Likewise, the Complaints handling officers must be competent and skilled, act professionally, have integrity and offer services to the public respecting human rights-based approach framework and be sensitive to diversity and gender integration approaches at all times.

2.3 Complaints Lodging

A Complaint may be lodged by:

- i. A Complainant in person.
- ii. A person acting on behalf of the Complainant.
- iii. A group of persons.
- iv. Any other person authorized by law to act for the complainant.

The Office may also receive and admit anonymous complaints. Anonymous complaints will be treated as any other complaints lodged except that its consideration for admission will depend on availability of information provided or information received upon inquiry.

2.4 Complaints Reporting Channels

Complaints may be lodged through the following modes:

- i. Walk -in person in the Office Headquarters in Nairobi, or in any other place as may be advised by the Office from time to time;
- ii. By letters through the post office;
- iii. Online via email, web posting or through a designated complaints management information system (CMIS);
- iv. Place a call to the Office of the Data Protection Commissioner;
- v. Telephone / fax;
- vi. In writing including Braille & other methods for other persons with disability;
- vii. Text message short SMS message to a dedicated number.

2.5 Suo Motu Complaints

The Office may on its own motion (Suo Motu) initiate complaints including those that are:-

- i. Relevant to its mandate exposed through media (open source) or an anonymous persons; and

- ii. Originating from other public institutions reports including audits on government by private actors including Civil Society Organisations.

2.6 Forms of Complaints

A complaint to the Office should preferably be made in writing but oral complaint in any mode is acceptable as well.

Where the complaint is made orally, or otherwise or the complainant cannot read or write, the complaint may be reduced in writing by a designated officer. A person who reduces the complaint in writing shall read over the contents to the complainant and sign a declaration to the effect that the complainant has fully understood the contents.

A complaint may be made anonymously or treated in such a manner to protect the identity of or particulars of, the complainant where necessary. A written complaint form set out in schedule 1 will be filled out. The complainant will attach all relevant documentation in support.

2.7 Information required while lodging the complaint

In lodging a complaint, the complainant should provide the following:

- i. Indicate the capacity in which the complaint is lodged i.e. in person or on behalf of a third party or on behalf of a group, association, organization or organ of the state.
- ii. Provide personal information below: -
 - a. Full name of the complainant.
 - b. ID or Passport No.
 - c. Postal address No.
 - d. Sex (for statistical purpose only)
 - e. Age (for statistical purpose only)
 - f. Disability and Type (for statistical purpose only)
 - g. Telephone number(s) where they can easily be reached.
 - h. Email address (if available)
 - i. The preferred mode of communication by the complainant
 - j. Physical address or location (for statistical purpose only)
- iii. For privacy and confidentiality, the Office will make available screening rooms to facilitate one on one discussions between complainant and the complaint-handling officer to the exclusion of third parties, including other staff of the Office.
- iv. Provide information of the respondent as below:-

- a. Name (s) and contact details of the respondent (individual or institutional);
- b. Date of occurrence of the alleged infringement;
- c. The nature of the complaint;
- d. The name (s) of any persons that can provide further information relevant to the complaint, if any.
- e. Particulars of any person or institution that has previously made attempts to resolve the matter.
- f. Any actual or potential harm or any urgency to be taken note of (if the complaint goes through the normal complaints processing procedure.
- g. Avail any supporting documents to be used in the investigation process (can be furnished later)
- h. State in their view what redress/relief they are anticipating.

A complainant will be accorded reasonable time to avail documentary evidence but will not exceed 21 working days from the date of receipt of complaint or otherwise they wish to rely on.

An anonymous complaint will be processed by carrying out inquiry on the allegations made and ascertaining its veracity.

2.8 Complaints Acknowledgement

Any Complaint received by the Office will be acknowledged immediately but not later than 7 working days from date of receipt or lodging the complaint. Consideration will be given to the most appropriate and fastest mode of communication preferred by the complainant.

2.9 Confidentiality

All complaints received by the Office shall be handled with utmost confidentiality respecting individual's dignity and privacy.

A complainant when lodging a complaint or at any stage of processing the complaint may request that their personal particulars be kept confidential in communication with the respondent(s) for personal reasons.

All complaints touching information on children (upto 18 years) must be kept confidential and their identity not disclosed unless where necessary in the entire complaint handling process.

If the Office has received request for confidentiality, but is of the opinion that disclosure of the particulars is necessary for resolving the dispute; the Office

shall:-

- i. Inform the Complainant as soon as the decision is made
- ii. Require the consent of the complainant for the particulars to be disclosed. The consent should be made in writing and signed.
- iii. If the complainant declines to give such consent, the Office shall decline to process the complaint and mark it as closed.
- iv. The Office will inform the complainant in writing of the decision not to proceed on the grounds above.

Notwithstanding the foregoing, and anything contrary to any written law, no person handling a complaint at the Office will disclose contents of any document or information in their possession to a third party without authorization of the Data Commissioner or person(s) delegated by the Commissioner to handle Complaints and Investigations.

The Office will liaise with the Witness Protection Agency for referral and will accord any witnesses including the complainant or whistle blowers the desired protection as provided by the Witness Protection Act 2006.

3. SCREENING ALLOCATION AND CATEGORISATION

3.1 Preliminary Assessment to Inquiry

A complaint shall upon being entered into the register be forwarded to the Data Commissioner or persons delegated by the Commissioner to handle Complaints and Investigations for allocation to a complaints handling officer for screening to commence preliminary inquiry.

The complaint handling officer shall upon assessment: -

- i. Admit the complaint and initiate preliminary inquiry.
- ii. Advise the complainant in writing if the matter is admissible.
- iii. Make necessary referrals as appropriate.
- iv. Reject the complaint and notify the complainant immediately within 21 days from date decision is made.

The complaint handling officer will preliminarily verify allegations of the complaint through the following means: -

- i. Perusal of the availed documents,
- ii. Preliminary research,
- iii. Phone calls, emails, face-to-face interrogations and letters.

The complaint-handling officer will identify the category of inaction or violation and accordingly indicate if it fits into the categorization of the mandate of the Office.

3.2 Communication to the Respondent

The complaints handling officer will:

- a) Draft a communication notice/letter to the respondent requesting to receive their comments on the complaint. The respondent will have 14 days to respond to the claim.
- b) If on expiry of 14 days there is no response, the complaints handling officer will write a reminder giving seven (7) days to comply.
- c) If there is still no response then a final reminder will be issued giving the respondent another final seven (7) days to respond.
- d) On expiry of 28 days, the Office will issue Notice to Show Cause why the Office cannot proceed without the respondent's response.

3.3 Notice to Show Cause

Notice to show cause will issue to the respondent during the preliminary inquiry if the complaints handling officer establishes that the respondent needs to appear to clarify allegations, yet they have failed to respond to the complaint within set time limits.

If the respondent fails to respond, the Office may: -

- i. Progress the complaint to investigation in absence of respondent
- ii. Institute legal proceedings against the respondent
- iii. Report the respondent in the Office's annual statutory report.

3.4 Transmission of a Complaint to Preliminary Inquiry

Once the complaint handling officer has considered that the admissibility criteria has been met, and categorization has been done, preliminary Inquiry will commence.

A complaint's handling officer who has any interest in the matter allocated to them must put on record the interest they have in the matter and refer the file back to the Data Commissioner or persons delegated by the Commissioner to handle Complaints and Investigations for re-allocation after documenting the reasons for such conflict.

3.5 Referral of complaints

Where a preliminary assessment determines that the complaint does not fall within the jurisdiction of the Office, the complaint handling officer will do the following: -

- a) Advise the complainant of the alternative legal or practical remedies.
- b) Recommend referral to an appropriate institute.
- c) Issue notice of inability to proceed for reasons given.

- d) Offer the complainant an opportunity to appeal the decision within 30 days.
- e) The appeal will be made in prescribed form and addressed to the Commissioner.
- f) A copy of the advisory letter will be filed in the general file.

3.6 Role of the Receiving Officer to Resolve Urgent Complaints

The Office appreciates the role of complaints screening Officer in resolving complaints. The Complaint screening officer upon receipt of an admissible complaint that is simple and straight forward in nature and require urgent attention will upon recording the complaint and having it registered do the following: -

- i. Notify the Director Complaints and Investigations of the urgency of the matter.
- ii. Discuss the proposed quick intervention proposed i.e. telephone call, Email or visit the respondent's office for a quick clarification.
- iii. Commence preliminary Inquiry for Frontline resolution that should be completed within 5 working days.
- iv. The complaint screening officer will record the terms of resolution (the outcome) and any action taken and file on General File in the registry.
- v. The screening officer will notify the complainant of the outcome from the frontline.
- vi. If the complaint is not resolved within 5 days working days period, the complaint will proceed through the normal processes of handling complaints

4. MANAGEMENT AND DETERMINATION OF COMPLAINTS

4.1 Register of Complaints

The Office shall keep a register of complaints in which all complaints shall be entered, coded and a file number issued.

All correspondences or reference to the complaint must bear the file number. The registry will keep a database of complaints received and handled by recording the reference number, the category of complaint, relevant dates of action and the resolution.

Data on complaints shall be disaggregated by age, sex, and category. The registry will take safe custody of all documents received in the matter and labelled accordingly.

4.2 Charging Fees

The Office shall not charge any fee for lodging and determining a complaint. The Office may reimburse any witness summoned to the Office to give evidence. The amount to be reimbursed shall be determined by the Data Commissioner.

The Complainant must lodge certified copies of the any supporting documentation. The complaint screening and handling officer, who receives support documents from the complainant, should only keep certified copies of the same and not originals.

4.3 Joint Consideration of Complaints

Where two or more complaints are lodged at the Office bearing similar allegations and same respondents, the Office may: -

- a) Order consolidation of such complaints.
- b) Inform the complainants of the same
- c) Treat one complaint as a test complaint and stay further action on the other complaints till resolution of the test complaint.
- d) The decision on the test case shall apply to the other complaints that are consolidated.
- e) The complainants in all the consolidated matters will be notified of the resolution by the Office.

4.4 Withdrawal and Lapse of Complaints

A complainant may in writing, withdraw a complaint pending before the Office at any stage during consideration.

However, the above notwithstanding the Office may on its discretion continue with investigation of the complaint if such investigation is in the public interest. The complaint lapses where the complainant fails to respond to the ODPCs communication for a matter under investigation for three months (three months from date of last communication). Where complaint has lapsed the complainant may apply to the Data Commissioner for re-admission of the complaint and give reasons in support of the application. The complaint will be re-admitted where the Data Commissioner is satisfied with the reasons given.

4.5 Conclusion of a Complaint

A complaint is concluded in the following circumstances:

- a) If found inadmissible and rejected;

- b) If it is resolved;
- c) If withdrawn by the Complainant; or
- d) If the complaint lapses.

4.6 Resolution of Complaints

The Office may resolve the complaint through: -

- a) Conduct inquiry
- b) Request and obtain information or documents
- c) Further investigation
- d) Undertake mediation, negotiation and conciliation
- e) Constitute a hearing panel
- f) Write or summon any persons to attend
- g) Obtain warrant of arrest for breach of any summons or orders of the Office
- h) Obtain orders from court authorizing search and seizure

4.7 Report Writing

At the conclusion of the assessment and after gathering evidence, the Complaint handling officer will write a report on the process and determination making appropriate recommendation.

The report format will include the following: -

- a) Indicate the complaint reference number and the parties disaggregating them by sex, age, disability, geographical among other social factors.
- b) Explain the methodology and process of investigation and include the response from the respondent if any.
- c) Assess evidence available for determination.
- d) State the violation as per the mandate of ODPC.
- e) Give chronology of events including any data disaggregated by age, sex, geographical, disability among other factors.
- f) Make the findings on record.
- g) Conclusion and recommendations.

COMPLAINTS FORM

Instructions

1. Fill out this template prior to lodging a complaint.

1. Details of Complainant	
(a) Full name of the complainant	
(b) ID or Passport No.	
(c) Postal address No.	
(d) Sex (for statistical purpose only)	
(e) Age (for statistical purpose only)	
(f) Disability and Type (for statistical purpose only)	
(g) Telephone number(s) where Complainant can easily be reached	
(h) Email address (if available)	
(i) The preferred mode of communication by the complainant	
(j) Physical address or location (for statistical purpose only)	
(k) In what capacity are you filing this complaint (i.e. Were you personally aggrieved/ impacted or is this complaint filed on behalf of another person(s)) If complaint is made on behalf of someone, please also provide their details.	
2. Details of Respondent	
Name (s) and contact details of the respondent (individual or institutional):	
3. Details of Complaint	
(a) Date of occurrence of the alleged infringement:	
(b) The nature of the complaint:	
(c) The name (s) of any persons that can provide further information relevant to the complaint, if any:	

(d) Particulars of other persons impacted by the alleged infringement:	
(e) Particulars of any person or institution that has previously made attempts to resolve the matter:	
(f) Any actual or potential harm or any urgency to be taken note of:	
(g) Avail any supporting documents to be used in an investigation process:	
(h) State in your view what redress relief they are anticipating:	
<p>In the event that the Respondent is contacted, do you wish to remain anonymous?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If so, please explain why?</p>	
<p>Date of Complaint:</p> <p>Signature of Complainant:</p>	



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