



OFFICE OF THE DATA PROTECTION COMMISSIONER ISSUES A PENALTY NOTICE AGAINST OPPO KENYA

NAIROBI, Kenya, Dec 21 2022 – The Office of the Data Protection Commissioner (ODPC) has issued its first penalty notice against Oppo Kenya as a result of neglect and/or default to comply with an enforcement notice issued against it.

ODPC on 3 November 2022 issued an enforcement notice against Oppo Kenya (“Company”) after it infringed on the privacy of a complainant by using their photo on the company’s Instagram account (stories) without the complainant’s consent.

The penalty notice has been issued pursuant to Section 62 and 63 of the Data Protection Act, 2019 (Act) and Regulation 20 and 21 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021.

Oppo Kenya has refused to co-operate with ODPC by among others; failing to adduce and/or develop a policy for compliance with Sections 37 of the Act, which provides that a person shall not use, for commercial purposes, personal data obtained pursuant to the provisions of the Act, unless the person has sought consent from a data subject or is authorized to do so under any written law.

Oppo Kenya has also failed to adduce a data protection policy pursuant to the enforcement notice issued; and proof that it has developed an internal complaints mechanism to address data subjects’ complaints.

Oppo Kenya is therefore, required to pay to the ODPC a penalty of Kenya Shillings Five Million (KES 5,000,000) pursuant to Section 63 of the Data Protection Act, and Regulation 20 of the Data Protection (Complaints Handling Procedure and Enforcement).

Data Commissioner, Immaculate Kassait, MBS has urged entities to comply with the Data Protection Act by implementing data protection principles and safeguards to all processing activities that relate to the collection, storage and other processing of personal data and sensitive personal data.

“ODPC urges Data Controllers and Data Processors to ensure that the processing of personal data is in accordance with the provision of the Act. Failure to comply with the Act will result in instituting enforcement procedures,” she remarked.

Regarding the compliance audit notice which was previously issued to the 40 Digital Credit Providers, ODPC wishes to notify the public that as of the deadline for submission of documents for the compliance audit, 18 out of 40 entities had responded to the letter from the Office by submitting documents for preliminary review.

A comprehensive review of the documents submitted is currently ongoing.

In its preliminary findings, the Office notes that majority of the Digital Credit Providers have more than one product mentioned earlier registered under one entity.

Of the Digital Credit lenders that received a notice, 22 have failed to provide a response and notifications have been issued against them.

More details will be issued once the investigation is concluded.

Lastly, the Office notes that Aga Khan Hospital which had been issued an enforcement notice in October 2022 responded and is demonstrating compliance to the Data Protection laws.

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About the Office of the Data Protection (ODPC)

Office of the Data Protection Commission (ODPC) is a State corporation whose key mandate is to regulate the processing of personal data, protect the privacy of individuals and to provide data subjects with rights and remedies to protect their personal data.

The ODPC was established in November 2020 pursuant to the Data Protection Act, 2019 giving to effect Article 31 (c) and (d) of the Kenyan Constitution. The Data Protection (General) Regulations, 2021, Data Protection (Registration of Data Controllers and Processors) Regulations, 2021 and The Data Protection (Complaints Handling and Enforcement Procedures) regulations, 2021 were recently passed in order to enable implementation of the Act.

The Act gives the Office, through the Data Commissioner, a number of functions and powers including: (1) to receive and investigate any complaint by any person on infringements of the rights under this Act; (2) to serve an enforcement notice requiring an entity to take such steps to rectify its contravention of the Act within 30 days, where the Data Commissioner is satisfied that an entity has failed or is failing to comply with any provision; (3) and to conduct assessments for the purpose of ascertaining whether personal data is processed in accordance with the Act.