



# DATA PROTECTION REGULATIONS

Presentation on:

The Data Protection (Compliance and Enforcement) Regulations, 2021

Taskforce on the Development of the Data Protection General Regulations.

April, 2021

**This power point is provided to assist in understanding the draft Data Protection Regulations. It does not form part of the Draft Regulations. The draft Data Protection Regulations which are public documents and are available online are the only authoritative documents**

# SCOPE OF THE REGULATIONS



## **Complaints Handling Procedures**

- ▶ Lodging of the Complaint
- ▶ Register of complaints
- ▶ Screening of the complaint
- ▶ Discontinuation of a complaint
- ▶ Withdrawal of a complaint
- ▶ Joint consideration of complaints
- ▶ Notification of a Complaint to the Respondent
- ▶ Investigation of the Complaint
- ▶ Outcome of investigations
- ▶ Alternative Dispute Resolution for the Complaints

## **Enforcement provisions**

- ▶ Enforcement Notice
- ▶ Penalty Notice

# COMPLAINTS HANDLING PROCEDURES

## Lodging of a complaint



- A data subject or any person aggrieved by the decision of any person under the Act may lodge a complaint.
- Means – orally, online by email, web posting , by any other appropriate means
- A complaint may be lodged by; Complainant in person, a person acting on behalf of the Complainant, a person authorized by law, anonymously

## Register of complaints



- The Data Commissioner shall maintain a register of complaints
- An entry into the register shall state the particulars of the complaint
- The identity of the complainant shall be protected.

## Screening of a complaint



- admit the complaint,
- Advise the complainant that the complaint is not within the its mandate
- Advise the complainant that the same lies for determination by another institution.

## Upon Screening a Complaint



- Conduct and inquiry into a complaint
- Conduct investigations
- Undertake or facilitate alternative dispute resolutions

## Discontinuation of a complaint



- The Complaint doesn't merit further consideration
- A complainant fails or neglects to communicate without any justifiable reasons

## Withdrawal of a complaints



- A complainant may withdraw a complaint before its determination.
- A withdrawn complaint will be deemed to have been settled

# Joint Consideration of a Complaint



- Where two or more complaints are lodged of the same or similar allegations raised against a respondent, the Data Commissioner may;
- Consolidate the complaint
- Treat one complaint as a test complaint



## Notification of a complaint to the Respondent

- Upon admission of the Complaint, the Respondent shall be notified within 14 days
- Respondent shall make representations and provide any relevant material or evidence
- Review the complaint with a view of summarily resolving the complaint
- Provide a response

## Investigation of a complaint.

- Issue summons
- Examine any person in relation to a complaint
- Administer an oath of affirmation
- Require the production evidence
- Obtain a warrant from the Court
- Investigation report by the Data Commissioner.



## Outcome of the Investigation



Upon conclusion of the investigation, the Data Commissioner shall make a determination based on the findings of the investigations.

The determination shall state; the nature of the complaint, summary of the relevant facts, reasons for the decision, the remedy and any other relevant matters.

Remedies shall include; issuance of an enforcement or penalty notices, dismissal of the complaint, etc.

## Alternative Dispute Resolution.



Mediation

Negotiations

Conciliation.





# Enforcement Notices



## Issued where

- a data controller or data processors fails to comply with any provision of the Act and these regulations, the Data Commissioner will issue an enforcement notice, specifying the consequences of non-compliance with the notice.

## Review

- However, a data controller or a data processor is at liberty to apply to the Data Commissioner for a review of the enforcement notice during the duration of the notice, on grounds that:
  - There has been a change in the circumstances and facts.
  - One of the provisions of the enforcement notice need not be complied with in order to remedy the non-compliance.

## Appeal

- A data controller or a data processor may appeal to the High Court against a decision arising out of an enforcement notice.

# Penalty Notice



## Issued Where

- Where a data controller or a data processor fails to comply with an enforcement notice

## Contains

- The reasons why the Data Commissioner is imposing a penalty,
- The administrative fine imposed, and
- How the same is to be paid, and the available right of appeal the decision.

## Imposes

- A daily fine of not more than Kshs 10,000 for each penalty identified, until the breach is rectified.

# PLENARY SESSION

## Q&A

Comments and concerns can be sent to the following email address;

[dataprotectionregulations@odpc.go.ke](mailto:dataprotectionregulations@odpc.go.ke)

# The End

*Thank  
you*