



**OFFICE OF THE DATA PROTECTION COMMISSIONER**

**ODPC COMPLAINT NO. 0624 OF 2023**

**BEN MAMICHA.....COMPLAINANT**

**-VERSUS-**

**BRIDGE OXFORD INTERNATIONAL.....RESPONDENT**

**DETERMINATION**

*(Pursuant to Section 8(f) and 56 of the Data Protection Act, 2019 and Regulation 14 of the Data Protection (Complaint Handling Procedure and Enforcement) Regulations, 2021)*

**A. INTRODUCTION**

1. The Constitution of Kenya 2010, under Article 31 recognizes the right to privacy. Consequently, in an effort to further guarantee the same, the Data Protection Act, 2019 (hereinafter as "the Act") was enacted. 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) 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.
2. The Office of the Data Protection Commissioner (hereinafter as "the Office") is a regulatory Office, established pursuant to the Data Protection Act, 2019. The Office 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.

3. The Office received a complaint on 20<sup>th</sup> April, 2023 by Ben Mamicha (hereinafter as "the Complainant") against Bridge Oxford International (hereinafter as "the Respondent") and pursuant to Section 56 of the Act and Regulation 14 of the Data Protection (Complaint Handling Procedure and Enforcement) Regulations, 2021 (hereinafter as "the Regulations"), has conducted investigations into the complaint.
4. On 30<sup>th</sup> May, 2023, the Office sent a request for more information letter to the Complainant requiring him to furnish us with: -
  - i) The screenshots of the unsolicited promotional messages he received;
  - ii) Information on whether or not he has opted out from receiving the promotional messages; and
  - iii) Any other relevant information/documentation that can assist us in carrying out investigations.
5. On 19<sup>th</sup> June, 2023, the Complainant responded to our request for more information letter by furnishing us with the screenshots requested.
6. Afterwards and on the same date, 19<sup>th</sup> June 2023, the Office in exercise of its mandate as envisaged under the Act and in the promotion of justice, notified the Respondent of the complaint filed against it via a letter dated 19<sup>th</sup> June, 2023 and served upon the Respondent on the same day. In the notification of the complaint filed against the Respondent, the Respondent was to provide: -
  - a) A response to the allegations made against it by the Complainant;
  - b) Any relevant material or evidence in support of its representation above;
  - c) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant;

- d) The legal basis relied upon to store, process and engage with the Complainant's personal data and whether or how it fulfils the duty to notify under Section 29 of the Act;
  - e) Details of how it fulfils the Data Subject's right of rectification and erasure as per Section 40 of the Act;
  - f) The technological and organizational safeguards that have been put in place to ensure that such occurrence mentioned in the complaint do not occur again;
  - g) Its data protection policy outlining the complaint handling mechanism to deal with matters relating to the rights of a data subject under the Act, the Regulations, and any alleged contravention directed to its attention by data subjects;
  - h) Proof of registration with this Office as data controllers and data processors; and
  - i) Demonstration (by way of written statement) of its level of compliance with the requirements under the Act and the Regulations. In particular, an elaborate representation of how data subjects can exercise their rights in relation to data protection.
7. On 22<sup>nd</sup> June, 2023, the Respondent via Whatsapp, responded to the Notification of Complaint letter.
8. Upon receipt of the aforementioned correspondences and documents, investigations were conducted as required by Regulation 13 (1) of the Data Protection (Complaint Handling Procedure and Enforcement) Regulations, 2021.
9. This determination is pegged on the provisions of Regulation 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 which states that the Data Commissioner shall, upon the conclusion of

the investigations, make a determination based on the findings of the investigations.

## **B. NATURE OF THE COMPLAINT**

10. The Complainant alleges that the Respondent procured his personal contact details as well as his professional details and determined that he is indeed a lawyer and sent promotional messages to his direct line.

## **C. THE RESPONDENT'S RESPONSE**

11. On 22<sup>nd</sup> June, 2023, the Respondent via Whatsapp, responded to our Notification of Complaints letter and stated verbatim, "Hi... We are no longer based in Kenya sorry."

## **D. ISSUES FOR DETERMINATION**

- i. Whether prior consent was sought and obtained from the Complainant before collecting his personal data and using it to send promotional messages to him.
- ii. Whether the Respondent provided an opt out mechanism to the Complainant to its promotional messages.
- iii. Whether there was any infringement of the Complainants' Rights as data subjects as provided for in the Data Protection Act, 2019.

## **E. ANALYSIS AND DETERMINATION**

### **I. WHETHER PRIOR CONSENT WAS SOUGHT AND OBTAINED FROM THE COMPLAINANT BEFORE COLLECTING HIS PERSONAL DATA AND USING IT TO SEND PROMOTIONAL MESSAGES TO HIM**

12. The Complainant alleged that the Respondent procured his personal contact details as well as his professional details and determined that he is indeed a lawyer and sent promotional messages to his direct line without his consent. The Complainant produced screenshots of the promotional messages as evidence of the same.

13. The promotional message addressed the Complainant as 'Wakili' meaning lawyer/advocate and a search at the Law Society of Kenya advocates search engine indeed confirms that the Complainant is an Advocate of the High Court of Kenya. The message was intended to promote the Respondent's Law firm Document Management System and have the Complainant sign up as a client.

14. With no evidence being tabled by the Respondent on whether it obtained prior consent from the Complainant before collecting and processing his personal data, the upshot is that I find that the Respondent did not obtain prior Consent from the Complainant and used his personal data for commercial purposes contrary to Section 37 of the Act.

**II. WHETHER THE RESPONDENT PROVIDED AN OPT OUT MECHANISM TO THE COMPLAINANT TO ITS PROMOTIONAL MESSAGES**

15. The Respondent did not provide an opt out mechanism to its promotional messages contrary to Regulation 15(1)(d) of the Data Protection (General) Regulations, 2021 which mandates data controllers and data processors to provide a simplified opt out mechanism for the data subject to request not to receive direct marketing communications.

**III. WHETHER THERE WAS ANY INFRINGEMENT OF THE COMPLAINANTS' RIGHTS AS DATA SUBJECTS AS PROVIDED FOR IN THE DATA PROTECTION ACT, 2019**

16. Section 26 of the Data Protection Act provides for the rights of a data subject which are: -

- a) to be informed of the use to which their personal data is to be put;
- b) to access their personal data in custody of data controller or data processor;
- c) to object to the processing of all or part of their personal data

- d) to correction of false or misleading data; and
- e) to deletion of false or misleading data about them.

17. Section 40(1)(b) provides for the right of erasure of personal data that was obtained unlawfully. Further, Regulation 12(1)(d) of the Data protection (General) Regulations, 2021 states that, "... a data subject may request a data controller or data processor to erase or destroy personal data held by the data controller or data processor where the processing of personal data is for direct marketing purposes and the individual objects to that processing."
18. The Respondent by not informing the Complainant of the use to which his personal data was to be put, at the point of collection of the personal data, violated his right to be informed. The Respondent collected the personal contact and professional details of the Complainant and did not inform him that his personal data was being collected and that it was going to be used to send him promotional messages. Further, the Respondent did not provide details or an explanation of where it got the contact details of the Complainant as it is alleged that the Respondent did not collect the same directly from the Complainant.
19. The Respondent did not provide evidence of erasure/deletion of the Complainant's personal data from its database or records despite requests by the Complainant to do so thereby violating his right of erasure of personal data that was obtained unlawfully, contrary to Section 40(1)(b) of the Act. The Respondent neglected/failed to erase or destroy the personal data of the Complainant despite processing it for marketing purposes and the Complainant having objected to the processing, contrary to Regulation 12(1)(d) of the Data Protection (General) Regulations, 2021.
20. The Respondent collected the personal contact and professional details of the Complainant from a third party without the consent of the Complainant contrary to Section 28 (1) of the Act which states that, "a data controller or data processor shall collect personal data directly from the data subject."

21. The Respondent also neglected/failed to perform its duty to notify by not informing the Complainant of the particulars contained in Section 29 of the Act.

22. Last but not least, the Respondent used the personal data of the Complainant for commercial purposes without his consent. This is contrary to Regulation 15(4) of the Data Protection (General) Regulations, 2021 and imposes criminal liability on the Respondent.

23. In view of the foregoing, I arrive at the conclusion that the Respondent violated the rights of the data subject as provided for in the Act.

#### **F. FINAL DETERMINATION**

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

- i. The Respondent is hereby found liable.
- ii. An Enforcement Notice to hereby be issued to the Respondent.
- iii. Parties have the right to appeal this determination to the High Court of Kenya.

**DATED** at **NAIROBI** this 17<sup>th</sup> day of July 2023



**Immaculate Kassait, MBS**  
**DATA COMMISSIONER**

