



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1262 OF 2025

EMMANUEL NG'OSOSEI.....**COMPLAINANT**

-VERSUS-

INSTITUTE OF ECONOMIC AFFAIRS.....**RESPONDENT**

DETERMINATION

(Pursuant to Section 8(1)(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 Complainant lodged a complaint with the Office on 27th August 2025. He avers that the Respondent failed to honour his right to object to the processing of his personal data with regards to being unsubscribed from the Respondent's mailing list.

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 as '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(1)(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 (hereinafter as '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 27th August 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations by the Complainant, who was an aggrieved data subject.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondents of the complaint filed against them *vide* a letter dated 12th September, 2025 and referenced ODPC/CIE/CON/2/1 (640). In the Notification of the Complaint, the Respondent was informed that if the allegations by the Complainant were true, they were in violation of various provisions of the Act. Further, the Respondent was asked to provide this Office with the following:
 - a. A response to the allegations made against them by the Complainant;
 - b. Any relevant materials or evidence in support of their response above, including records of the Complainant's initial subscription to their mailing list, and their acknowledgement of receipt of that request;
 - c. An explanation on the legal basis relied upon for continuing to send emails to the Complainant after acknowledging his request to unsubscribe;

d. A copy of their internal policies, guidelines or procedures governing subscription, un-subscription and the use of personal data for direct marketing purposes;

e. Evidence of the opt-out or un-subscribe mechanisms included in the emails sent to the Complainant, and an explanation as to why the Complainant continued to receive emails despite his objection;

f. Details of the safeguards or measures implemented to ensure compliance with the principles of data protection, including transparency, data minimization and accountability in the context of email marketing;

g. The mitigation measures adopted or being adopted to address the complaint; and

h. Any other relevant information they wished the Office to consider.

8. On 3rd October 2025, the Respondent submitted to the Office a Response to the Notification of Complaint.

9. On 15th October 2025 the Complainant submitted to the Office a rejoinder to the Respondent's response.

10. Upon receipt of the aforementioned correspondences and documents, investigations were conducted as required by Regulation 13(1) of the Complaints Handling Procedures, 2021.

11. This determination is therefore as a result of analysis of the complaint as received and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

12. It is the Complainant's assertion that the Respondent failed to honour his right to object to the processing of his personal data. The Complainant stated that despite sending an email requesting to be unsubscribed from the Respondent's mailing list which the Respondent acknowledged and assured him would be actioned. The Respondent failed to remove the Complainant's email address from their mailing list as requested.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

13. The Complainant, was a subscriber to the Institute of Economic Affairs' (IEA Kenya) mailing list, which he joined in 2021.
14. The Complainant alleges that despite his repeated requests to be removed from the Respondent's mailing list, the Respondent continued to send him unsolicited emails.
15. On 9th July 2025, the Complainant states that he wrote to the Respondent requesting to be unsubscribed from their mailing list, as the Respondent's emails did not provide an option to opt-out of further communication.
16. On 15th August 2025, after continued receipt of emails, he wrote again to the Respondent indicating his intention to take legal action should the issue persist.
17. However, despite the Respondent's assurance, the Complainant received yet another unsolicited email from the Respondent on 26th August 2025.
18. The Complainant sought for compensation as one of the remedies from this Office.

ii. THE RESPONDENT'S CASE

19. The Respondent submitted a response to the notification on 1st October, 2025.
20. In their response, the Respondent stated that the Complainant had initially subscribed to receive communications from the Institute of Economic Affairs (IEA Kenya).
21. The Respondent confirmed that upon receiving the Complainant's request to be removed from its communication lists, it promptly complied by expunging the Complainant's name and contact details from its communication databases.
22. The Respondent acknowledged that, due to an oversight, the Complainant subsequently received an invitation email. They explained that this occurred because the event mailing list had not yet been fully reconciled with the main newsletter database.

23. The Respondent emphasized that the incident was purely inadvertent and carried no malicious or vexatious intent. To address the matter, the Respondent expressed willingness to issue a formal apology to the Complainant and to confirm that all of his personal details would be permanently removed from its systems.

24. The Respondent further averred that they would remind its communications and IT teams of the importance of strict adherence to its internal data management policies, which are aligned with the provisions of the Data Protection Act, 2019, and related regulations.

25. The Respondent concluded by expressing hope that the assurances provided would resolve the matter amicably, noting that while it regretted the oversight, it did not concede liability, as the single unintended email invitation did not, in its view, constitute a breach of data protection laws warranting the claims made by the Complainant.

iii. THE COMPLAINANT'S REJOINDER

26. The Complainant submitted a rejoinder to the Respondent's response dated 15th October 2025.

27. After receiving several emails from the Institute of Economic Affairs (IEA Kenya), the Complainant stated that he elected to be removed from their mailing list. However, he observed that there was no available option to unsubscribe, prompting him to reach out directly to the Respondent by email.

28. On 9th July 2025, the Complainant formally requested that his email address be deleted from all of the Respondent's mailing and communication lists, as there was no alternative mechanism provided for opting out. Despite this clear request, he did not receive any acknowledgment or confirmation that his name had been removed.

29. According to the Complainant, more than a month later, on 15th August 2025, he received another unsolicited email invitation from the Respondent, contrary to his earlier request. He responded immediately, reminding the Respondent of his prior message and indicating that he would pursue legal action should the

communications persist. The Respondent acknowledged receipt of this message and assured the Complainant that legal action would not be necessary.

30. Notwithstanding these assurances, the Complainant averred that he received yet another unsolicited email from the Respondent on 26th August 2025. He responded once again, noting that his name had evidently not been removed from the mailing list and informed the Respondent that he had sought legal action. The Respondent subsequently acknowledged that the continued emails were a mistake on their part.
31. That despite this acknowledgment, the issue persisted, and on 16th September 2025, he received yet another unsolicited email from the Respondent. He expressed his distress and disappointment in a follow up message, citing the continued communications as a nuisance. The Respondent did not respond to this final correspondence, prompting him to file this formal complaint with this office.
32. In response to the Respondent's claim that only a single email was sent due to an oversight, the Complainant clarified that the record demonstrated a series of four separate email communications received after his explicit withdrawal of consent. He maintained that the Respondent's characterization of the matter as a "single unintended invitation" was inaccurate and misleading.
33. The Complainant stated that the repeated unsolicited communications caused him significant inconvenience, frustration, and emotional distress, as his personal data continued to be processed contrary to his express instructions. He further noted that the time and effort expended in repeatedly following up and documenting the occurrences compounded his distress.
34. While acknowledging the Respondent's willingness to issue an apology, the Complainant maintained that such an apology was insufficient, as the issue was not a one-off technical oversight but a continuous failure to honor a legitimate and lawful deletion request.

F. ISSUES FOR DETERMINATION

35. In light of the above, the following issues fall for determination by this Office:

- i. Whether there was a violation of the Complainant's rights under the Act and attendant regulations.
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THERE WAS A VIOLATION OF THE COMPLAINANT'S RIGHTS UNDER THE ACT

36. Section 26(c) of the Act provides for the right to object to processing of personal data. Further Section 36 of the Act states that, "*a data subject has a right to object to the processing of their personal data, unless the data controller or data processor demonstrates compelling legitimate interest for the processing which overrides the data subject's interests, or for the establishment, exercise or defence of a legal claim.*"

37. In this case, the Complainant exercised his right to object to the processing of his data, by writing an email dated 9th July 2025 and 15th August 2025 to the Respondent. Despite this, the Complainant still continued to receive marketing communications from the Respondent.

38. Regulations 8 (4) & (5) of the General Regulations provides that the right to object to processing applies as an absolute right where the processing is for direct marketing purposes.

39. Based on the above, this Office concludes that the continued processing of the Complainant's personal data, despite the Complainant's clear objections, constitutes a direct violation of the Complainant's right to object under Section 26 (c) of the Act.

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

41. 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.

42. The Complainant requested this Office to issue an award of compensation. Section 65 of the Act provides 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. The Section indicates that damage included financial loss and damage not involving financial loss including distress.

43. Further, Regulation 14 (3) (e) of the Enforcement Regulations provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.

44. In considering whether to issue compensation, this Office takes into consideration the fact that the Complainant's right to object processing under Section 26(c) of the Act was infringed upon by the Respondent and unlawfully processing the Complainant's personal data.

45. In this context, the Respondent is hereby ordered to pay the Complainant **Kenya Shillings Two Hundred and Fifty Thousand Shillings (KES 250,000)** as compensation.

G. FINAL DETERMINATION

46. The Data Commissioner therefore makes the following final determination: -

- i. The Respondent is hereby found liable.
- ii. The Respondent to pay the Complainant a sum of **Kenya Shillings Two Hundred and Fifty Thousand (KES 250,000)** as compensation.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at NAIROBI this 25th day of November 2025.



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER



KENYA

