

## **This is a summary of the decision of the DPC**

The Data Protection Office (DPO) received a complaint through email under section 6 of the Data Protection Act 2017 from Complainant against Respondents regarding:

1. how the concerned attorney and her sister obtained his personal documents (birth certificate, marriage certificate, and copy of the identity card) as well as that of his wife for the issuance of a succession affidavit?
2. Whether the attorney had really written to the authority concerned (hereinafter after referred to as the 'Authority') for issuing birth/marriage certificate and if so to have the date of this letter and what kind of instruction was given by her sister?
3. Whether the affidavit has been completed or not?

Before lodging the complaint, Complainant requested information from this office on the following:

- 1- Whether a sister or a brother or any member of a family has the legal right to issue birth and marriage certificate for his wife and himself?
- 2- If these personal data were issued or copied and submitted without his permission, what is his right? What could be his recourse?

The DPO wrote to the Authority to request clarifications regarding the above points raised by Complainant and on the following questions:

1. What is the right of the person in this case under the concerned Act?
2. How the process is currently being done at the Authority?"

The Authority provided the below clarifications:

*"2. Section 9(1) of the concerned Act provides that:*

*"Any person may, on payment of the appropriate fee specified in the schedule, obtain a certificate in respect of an entry or copy of an entry relating to the registration of-*

- (a) his birth, the birth of his spouse or any ascendants or descendants;*
- (b) his marriage, any previous marriage of his spouse or the marriage of his ascendants or descendants;*
- (c) any death."*

3. *In view of the above, a sister or brother cannot legally apply for the birth and marriage certificates of their siblings.*

4. *The current process of application of civil status extracts at the Authority is as follows:*

**Local citizens**

(i) *an applicant has to call at any Authority to obtain his birth or marriage certificate, that of his spouse or any of his ascendants /descendants upon proof of his Identity.*

**Mauritian Citizens living abroad**

(ii) *However, application of extracts is also done via emails or fax by Mauritian Citizens living abroad. Upon application, the latter should send an email or fax addressed to the Registrar of the Authority, authorising any person to collect same. Moreover, he/she should indicate the name and National Identity Card number of the collector.*

**Request from Barristers/Attorneys/Notaries**

(iii) *Furthermore, Barristers/Attorneys /Notaries request for ... documents of citizens on behalf of their clients for specific purposes, e.g, affidavits of succession, Divorce, etc. In addition, the requests should be signed by the legal professionals and duly authenticated.*

**Bedridden cases**

(iv) *In case an applicant is bedridden or is unable to call at the Authority for application of his birth /marriage extracts, he may administratively be represented by a proxy to act on his behalf.*

5. *As regards to the course of action as requested at para 2, the person should seek legal advice from an Attorney/Barrister."*

The DPO sought further clarifications with the Authority regarding point 3: *"Can Barristers/Attorneys/ Notaries request the Authority documents of citizens (in this case the brother and his wife) on behalf of its clients (the sister). It is to be noted that for this case, the sister doesn't have the permission of her brother to issue the documents (the brother birth certificate and marriage certificate)."*

The Authority informed this office that:

*"You may wish to note that whenever legal professionals are requesting for extracts from the Authority, they are acting on behalf of their client. As such, it is understood that the legal practitioner has ascertained that consent of all the heirs has been obtained."*

The Complainant was therefore informed of the reply provided made by the Authority and thereafter an official complaint was lodged by Complainant to this office.

The DPO informed Complainant that the office will investigate only on how his sister and the attorney proceeded to have his personal documents (birth certificate, marriage certificate and copy of the identity card) as well as that of his wife. He was also informed to contact the required authorities regarding whether the affidavit was

completed or not and how his sister and the attorney proceeded with it given that his late brother has two daughters who have no birth certificate and identity card.

Consequently, the office issued a letter to Respondents (Complainant's sister and the Attorney) where they were requested to provide their statements on the allegation(s) made by Complainant within 21 days after receipt of the letter.

The Data Protection Office received a reply from the Attorney and she stated that:

1. Her services have been retained in ... October 2018 by the heirs of the Complainant's parents except complainant and her assignment related to the drawing up of an affidavit (A letter signed by heirs except Complainant was provided as evidence to this office);
2. It is usual practice for attorneys to apply copies of documents from the Authority (Copy of the letter was enclosed with the reply); in that respect, the following documents had been requested. An attorney in the course of drawing an affidavit is bound to ask details about the heirs including but not limited to their address and profession. She confirmed that there is no copy of the national identity card of Complainant in her client's file nor information regarding the Complainant's spouse.
3. The drawing of the affidavit is not completed by reason of the attitude of the Complainant; accordingly, the heirs who had contacted her office have been notified verbally of those circumstances delaying the performance of the assignment;
4. She is of the view that consent of the Complainant is not required being given that the processing is at least necessary –
  - for compliance with any legal obligation to which her office or her position as an attorney is subject;
  - in order to protect the vital interests of the other heirs related to the Complainant.

The DPO received a replied form Complainant's sister and the latter stated that:

1. As mentioned by the complainant, it was the intention of all the heirs, but the complainant, to proceed with an "affidavit de notoriété "(succession)" ("the affidavit") following the passing of their father in 2004 and their mother in 2016. In that sense, she talked with the Complainant on Whatsapp
2. The Complainant was not agreeable to a family meeting regarding the matter and had an offensive attitude towards her in the sense that he threatened her several times on the phone and refused all discussions.
3. The services of the Attorney-at-Law has been retained by all the heirs in order to draw up the said affidavit. In no case, she or her Attorney was in possession of

the Complainant's National Identity Card or that of his spouse. She is of the opinion that all procedures have been respected by her Attorney. The Complainant is deliberately misleading the Data Protection Office when stating the contrary. The affidavit has not been completed yet, due to the lack of documents from the Complainant, but it is the intention of all the heirs of late to proceed with the drawing of the affidavit.

4. The complaint is vexatious and devoid of merits. The Complainant has been acting in bad faith and misleading the DPO. She further stated that this is not the proper forum to discuss and resolve family matters. I and as well as all the heirs in the succession are in the opinion that this complaint should be summarily dismissed.

Subsequently, Complainant was informed by email on the replies of Respondent and was informed once again that the DPO will investigate only on how his sister and the attorney proceeded to have his personal documents (birth certificate, marriage certificate and copy of the identity card). He was also required to provide the office with concrete evidence on the allegation(s) made within 21 days after receipt of this email, otherwise, the enquiry will be finalised and closed.

The Complainant replied to the email above stipulating that he wished to know on what date the Authority has received the letter from the Attorney.

Further reply was provided by Complainant as followings:

1. Both Respondents give him the impression that he is boycotting the drawing of this affidavit.
2. The drawing of an affidavit, as the procedure requires, for a married couple, the birth certificate, marriage certificate, including a copy of the husband's identity card and for the wife too. Since the attorney only asked him about the nature of his profession, so he asked the latter whether she already had all his documents. But the Attorney did not reply leaving him in doubt.
3. The Authority has replied to him and informed him that for this case: "*You are hereby informed that legal professionals, acting on behalf of their clients, must ensure that consent of all heirs are obtained before requesting for civil status extracts from the Authority.*"

The DPO emailed the Authority regarding this complaint and requested the organisation to provide the below clarifications:

- " 1. Is the consent of Complainant needed in this case given that the attorney did not request his act of birth as well as of that of his wife and their act of marriage in the letter dated ... October 2018?

1. With regard to the deceased parents, who have the right to request for their act of birth and act of marriage?
  - a. Can anyone of the heirs request the said documents or is consent of all heirs required to retrieve the documents of the deceased parents?
2. Under which circumstances is the consent of all heirs required?
3. In the event there is an alleged malpractice about the drawing up of the succession affidavit, please clarify with whom the person concerned should report the matter."

The Authority answered as follows:

*"Q1: Please note that on ... October 2018, the attorney did not request for any extracts relating to the birth of Complainant, that of his wife or his marriage.*

*Q2: Section 9 (a) (b) of the Act, allows a person to apply for his extracts, that of his spouse, his ascendants or descendants only.*

*Q2(a): Section 9(c) provides that "any person may, on payment of an appropriate fee specified in the schedule, obtain a certificate in respect of an entry or copy of an entry relating to the registration of any death". Kindly note that death certificates are not protected by the Data Protection Act (DPA) 2017.*

*Q3: The consent of all heirs is required in all circumstances.*

*Q4: In the event, there is an alleged malpractice about the drawing up of a succession of affidavit, the person concerned should consult a legal adviser."*

The DPO sought further clarifications concerning the answer for Q3 provided from the Authority. This office requested the Authority to clarify 'all circumstances' in the case of drawing up a succession affidavit (i.e. at which particular phase the consent of all heirs is needed in this process).

Complainant emailed to the office to request an update regarding the enquiry. The office replied to the Complainant to inform the latter that an enquiry is in progress and that all enquiries are confidential by nature. He was also informed that he would be contacted if further information will be required from him.

The Authority replied to this office regarding the further clarifications requested by this office and invited the DPO to contact the notaries chambers (chambres des notaires) for precise information.

Subsequently, a letter was issued to the notaries chambers to inform the organisation about the complaint and to request clarification regarding the circumstances the consent of all heirs is required in the case of drawing up a succession affidavit.

A reply was received by email from 'Chambre des Notaires de L'île Maurice':

*“The collection of personal documents and data is essential to prepare Affidavits of succession usually by attorneys at law ) or « Notoriété après décès” ( usually by notaries).*

*The attorney or the notary is fully protected by section 28 of the DPA, which reads as follows:*

**Section 28. Lawful processing**

*(1) No person shall process personal data unless –*

*(b) the processing is necessary –*

*(i) for the performance of a contract to which the data subject is a party or in order to take steps at the request of the data subject before entering into a contract;*

***(ii) for compliance with any legal obligation to which the controller is subject;***

*(iii) in order to protect the vital interests of the data subject or another person;*

***(i) for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;***

***(v) the performance of any task carried out by a public authority; ”***

The Office informed Complainant by way of an email of the replies received from the Authority and the notaries chambers. Besides, this office informed Complainant that based on the enquiry conducted by this office, there is no concrete evidence to substantiate the allegations made and that the enquiry is now closed. The complainant was also requested to contact the required authority for any issues regarding the drawing up of succession affidavit since this is not under the jurisdiction of this office.

The Complainant responded to the above email on the same day as follows:

*“ ...*

*On one side, everybody wants to draw an affidavit, but on the other side, amazingly both the applicant and the executor did not felt necessary to ask me or to ask the Authority for an extract copy !!*

*However the letter of ... is in total contradictory, of which was shown to your office, and following the explanation of the Authority.*

*Anyway, as suggested by your office, I will seek redress, now by a deep enquiry upon other appropriate instances and no stone will be left unturned. The faulty party must assume.*

*Thank you for your attention, and your time consuming for this enquiry.”*

The DPO received an email sent by the managing director (hereinafter referred to as the “MD”) of a Company who informed the office that he is contacting the DPO on behalf of the Attorney. The DPO was further informed by the MD that Complainant filed a complaint with the Mauritius Law Society. A copy of the complaint was

attached to the email. The MD also informed that he is of the opinion that the allegations made by the Complainant are frivolous and vexatious in as much as his acts and doings have either caused an offence to be committed (the time frame for having the affidavit of succession has most likely lapsed) and/or constituted a deliberate attempt to deprive his coheirs of their rights. He believed that he has a hidden agenda and would not hesitate to tarnish the reputation of all those who get in the way, including the staff of the DPO.

The DPO replied to the MD of the Company representing Respondent No.2, to inform the latter that in the last communication made by this office to Complainant, Complainant was informed that the drawing up of succession affidavit is not under the jurisdiction of this office and he was thus requested to contact the required authority for any issues regarding this matter. In addition, this office informed that an investigation was carried out on how his sister and the attorney proceeded to have his personal documents and that of his spouse (birth certificate, marriage certificate and copy of the identity card).

The DPO sent an email to the MD of the Company representing Respondent No.2 as follows: *"You are further informed that for consent not to be required, there must be a provision in the relevant law concerning Attorneys and other legal practitioners or even the Civil Status Act which allows for the sharing of this information. Please confirm whether this is the case and enclose the relevant provisions of the law."*

The MD informed by email that, concerning the clarification sought by the DPO, the Attorney at Law, upon his services being retained, has a mandate ad litem as expressed in the Code de procedure civile and that he will revert with further details shortly.

The MD of the company provided an article from le Mauricien regarding the sale of land. In the article, the notary accuses her client of having falsified a birth certificate and a death certificate to make her believe that she was the heir of a family in England and thus to proceed with the sale of land belonging to these people. This case has been filed at the Supreme Court.

In one of the correspondences sent by email to this Office from the MD of the company, this office took note that the Attorney informed the MD that the full name and date of birth of Complainant was given to her by the heirs amongst other civil status acts which were missing to enable her to apply for the relevant Acts of Civil Status for that specific purpose, not for any other purposes. She also informed that the other heirs cannot be penalised merely because one heir is refusing to hand over his birth certificate and that the Authority has always supplied the Acts of civil status to the Attorney requesting same who has a Mandat Ad Litem to act.

The Attorney provided the clarifications requested from this Office through the MD of the Company as follows: “

1. **The provisions which we found to be appropriate in the present matter are:**
  - a. The Law Practitioners Act- Sections 3 and 16 which are reproduced hereunder;
  - b. The Code de Procédure Civile- Article 61 & Article 75
  - c. The Civil Status Act- Section 5
  - d. The Code Civil Mauricien- Article 812.
  
2. **The interpretation of the Law Practitioners Act and the Code de procedure civile**

**(a) The Mandat Ad litem**

It is clear from the provisions referred to above that a law practitioner, in this case an attorney, has the authority, when his or her services are retained by a client, to draft affidavits or prepare an affidavit or any other document under private signature, plaint or pleading, or any other judicial or extrajudicial document;

From the moment the client- attorney relationship is established, the attorney at law has the authority by reason of the ‘ *mandat ad litem* ’ assigned to the latter by the Client.

Thus, Le *mandat ad litem* is defined as ‘ *un mandat de représentation en justice par lequel un mandant confère à une personne habilitée par la loi..... la mission de le représenter en justice et qui emporte pouvoir et devoir d'accomplir au nom du mandant, les actes ordinaires de procédure judiciaire et une mission d'assistance.*

La constitution de l’avoué [\[1\]](#) emporte mandat de représentation en justice: l’avoué reçoit ainsi pouvoir et devoir d’accomplir pour son mandant et en son nom, les actes de la procédure.

**(b) L’étendue du mandat ad litem**

**L’avoué qui a reçu mandat par son client de le représenter en justice peut accomplir tous les actes de procédures utiles à la conduite du procès. (In the present matter, the Attorney is initiating judicial proceedings ( partition and liquidation of the properties) on behalf of her clients with a view to seek a decision to ensure that all the heirs receive their respective shares in the succession of their late authors, which they are entitled to according to law ( cf, Article 812 Code Civil).**

**In that respect, all the pertinent details concerning the names and the date of birth of the heirs including the complainant had been provided to the Attorney.**



A cet égard, lorsque la représentation est obligatoire, c'est l'avoué dans le système judiciaire mauricien qui exercera cette mission, tandis que « l'avocat plaident » ne pourra qu'assurer, à l'oral, la défense du justiciable devant la juridiction saisie.

**En tout état de cause, le mandat ad litem confère à l'avoué les pouvoirs les plus étendus pour accomplir les actes de procédure, tant au stade de l'instance, qu'au stade de l'exécution de la décision.**

Au stade de l'instance l'avoué investi d'un mandat *ad litem* peut :

- Placer l'acte introductif d'instance
- Prendre des conclusions et mémoires
- Provoquer des incidents de procédure

Au stade de l'exécution de la décision, l'avoué peut :

- Faire notifier la décision
- Mandater un huissier aux fins d'exécution de la décision rendue.

This is why it is not unusual to see documents including notice mise en demeure or affidavits the following wording... "electing its domicile at the office of the Undersigned Attorney".

### **3. In the light of the above, we reiterate the following:**

- the services of the attorney had been retained by the heirs of late parents (save for the Complainant) to apply before the Supreme Court for a division in kind.
- As part of the proceedings, the heirs must establish their 'filiation' to claim their interests and rights in the estate of a deceased.
- The Authority has never refused to provide attorneys with extracts of birth, marriage or death entries since it is always presumed that the attorney is acting on behalf of his clients by virtue of the mandat ad litem.
- Besides, we have been informed that members of the public can no longer make searches at the Registrar of Authority. And that the Officers have directed these persons to ask for a copy of the relevant acts through the services of the attorney.
- This practice has been accepted by the authorities. Indeed, applications or requests to have copies of birth, marriages or death certificates have been entertained by the Authority in cases related to adoption or even divorce proceedings.
- Finally this is a practice which prevails as can be gathered from an extract of *Le Mauricien* dated 8th October 2019 whereby an article reported how the acts and doings of a Notary Public upon application to the Authority to have copies of birth certificates have revealed a case of suspected fraud or forgery. "

The DPO sought clarifications from Respondent No.2 regarding the following point from the above letter sent by the MD on behalf of Respondent No.2: *“In that respect, all the pertinent details concerning the names and the date of birth of the heirs including the complainant had been provided to the Attorney.”*

This office also informed the MD in the same mail that the Authority informed that the office that on ... October 2018, the Attorney did not request for any extracts relating the birth of Complainant, that of his wife or his marriage The MD was thus requested to clarify how the Attorney obtained the details concerning the names and date of birth of the Complainant.

This office received an email from the MD where copies of the letters sent by the Respondent No.2 to the Authority were enclosed.

The MD further informed the DPO that the information was provided by the co-heirs having an interest in the estate of Complainant’s parents and that he is waiting for a copy of the letter signed by the co-heirs. The same will be forwarded upon receipt at his end.

**The Data Protection Commissioner decided as follows:-**

It is eminently clear that this thorough enquiry has established no irregularity on behalf of Respondents to conclude a breach of the Data Protection Act. At no time has any personal information relating to Complainant been obtained unlawfully or misused by Respondents as shown during our enquiry.