

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

A complaint was lodged at the Data Protection Office (DPO) by the Complainant with regard to the alleged disclosure of her personal data without her consent by Respondent No.1, a government body and from whom the Complainant was suspended since February 2017, to Respondent No.2, another government body and with whom the Complainant took employment after her suspension. The Complainant alleged that:

*“I have been employed at Respondent No.1 since June 2000.*

*I was suspended from my post of Accountant at Respondent No.1 since February 2017 against charges which have not been proven till now and they have agreed since June 2018 to pay me all my benefits for me to resign from my post.*

*In the meantime, I have taken another job at Respondent No.2 as Finance Manager as I have other obligations to fulfil and being a professional staying at home was getting me more depressed thus affecting my family life.*

*On 7 August 2019 I received a letter from my current employer, Respondent No.2 to give explanations about my previous post for which I was going to be suspended again. Since it did not have anything to do with Respondent No.2, I resigned as I did not feel that I should give any explanation.*

*I am hereby making a complaint for breach of Data Protection Act against divulging my personal information as employee from both Respondent No.1 and Respondent No.2. In both cases I was not consulted when information was requested and given. It would be appreciated if you could advise me how to proceed further. Please note that my attorney, Me [...] is also being copied in.”*

The Data Protection Office requested the following clarifications from the Complainant:

1. When did you take employment at Respondent No. 2?
2. Did you inform Respondent No.2 in your CV or letter of application or other form filled that you worked at Respondent No.1 before joining at Respondent No.2.”

Consequently, the Data Protection Office wrote to both Respondent No. 1 and Respondent No.2 to provide their views and justifications on the allegations made by the Complainant. The letter reads as follows:

*“A complaint has been lodged at this office regarding the alleged disclosure of personal information of your employee or ex-employee [the Complainant] from Respondent No.1 to Respondent No.2.*

*The complainant claimed that personal information about her suspension has been disclosed to Respondent No.2.*

*You are kindly requested to provide your views on the above and provide any justification according to section 28 of the Data Protection Act 2017 if any such personal data has been disclosed to Respondent No.2."*

Respondent No. 1 replied to the Data Protection Office, through a letter stating the following:

*"Please refer to your letter dated ....*

*Can you please provide a copy of the complaint lodged at the Data Protection Office?*

*According to the complaint, what personal information has been provided to Respondent No.2? Who, according to the complaint, asked for such information from Respondent No.2? Who, according to the complaints, disclosed 'personal information' to Respondent No.2? What personal data has therefore supposedly been disclosed and by whom?"*

Respondent No.2 also replied to the Data Protection Office stating as follows:

*"1. Reference is made to your letter ... and bearing ref: ....*

*2. You wish to note that Respondent No.2 is a privately state-owned institution established in 2017, operating under the aegis of the Ministry of ... .*

*3. We wish to further inform you that we did receive a letter from the Complainant regarding an alleged disclosure of personal information and we sought advice thereon from SLO.*

*4. SLO advice has been that Section 3 (4) (a) of the Data Protection Act stipulates that "this Act shall not apply to the exchange of information between Ministries, Government departments and public sector agencies where such information is required on a need to know basis."*

*5. As regards your letter and complaint regarding the alleged disclosure of information by the Complainant, we are unable to stipulate what information that the Complainant is referring to and based on which she has lodged a complaint.*

*6. We would therefore appreciate if further information could be provided thereto for us to submit a reply, if it so requires.*

*7.As an end note, we would appreciate that, being given Respondent No.2 started operation in end 2017, if it could be registered as a Data Controller."*

Subsequently, by way of a second email, the Data Protection Office reminder the Complainant to reply to the first email sent to her by the DPO for further clarifications, within 7 days.

The Complainant then replied to this second email stating the following:

*"It would be appreciated if you could state the relevancy of the questions asked.*

*My complaint was about my personal data being unlawfully divulged between Respondent No.1 and Respondent No.2.*

*Giving my personal data without my consent is against the Data Protection Act.*

*Please find attached the evidence about sharing my personal information. The letter is from the Ministry of ... which is the parent ministry to whom Respondent No.1 has provided the information.*

*It would be appreciated if you could investigate on the matter."*

The copy of the evidence provided by the Complainant reads as follows:

*"Request for information - [Complainant's name]*

*The service of the Complainant, former Accountant at the Respondent No.1, a parastatal body falling under the aegis of this Ministry, had been terminated since 08 September 2018.*

*This Ministry is considering the following request:*

- (i) payment of one and half month's salary per year of service;*
- (ii) payment of accumulated passage benefits;*
- (iii) payment of accumulated sick leave; and*
- (iv) transfer of the Complainant's pensions at SICOM Ltd subject to conditions and terms the latter may impose.*

*In light of the above, it would be much appreciated if you could kindly confirm the following at latest by 11h00 on Friday 28 June 2019:*

- (i) whether the Complainant is employed in your organisation and in which capacity; and*
- (ii) the date of joining your organisation.*

*Thanking you very much beforehand for your kind comprehension and collaboration”.*

Subsequently, the Data Protection Office notified the Complainant on the enquiry conducted by this Office by way of a letter, which is as follows:

*“Please refer to your complaint lodged at this office.*

*After enquiry with Respondent No. 1 and Respondent No.2, it has been found that the exchange of your personal information between Respondent No.1 and Respondent No.2, was made under subsection 4 of section 3 of the Data Protection Act (DPA) which reads as follows:*

*“This Act shall not apply to -*

- (a) The exchange of information between Ministries, Government departments and public sector agencies where such exchange is required on a need-to-know basis;”*

*This office thus finds no breach of the Data Protection Act and will proceed with the closure of this complaint within 21 days. However, should you have any additional views, please inform this office.”*

Consequently, the Complainant sent an email to the DPO as follows:

*“This refers to your letter dated [...] whereby it is mentioned that there is no breach as per subsection 4 of section 3 of the DPA, where the exchange is done on a need to know basis.*

*I would like to draw your attention that Respondent No.2 is a private company governed by the Companies Act and Employees Rights Act and not PRB.*

*If the information was on a need to know basis, the Respondent No.1 should have only asked about whether I was employed at Respondent No.2 and not giving my personal information without my consent as per the letter sent to you.*

*When applying for the post at Respondent No.2 they should have verified at that time itself prior to giving me the post as my past employer was mentioned on the application form.*

*I feel that DPO should see the laws again as this is causing prejudice to my person. In any way, the Ministry of ... and Respondent No.1 should have never given any information on my past issues with them to another company and the latter taking actions on unproven alleged points given.*

*I feel that my data has not been protected and that the DPO should reconsider my complaint and taking necessary actions."*

To date, the Complainant has not provided any further evidence to substantiate the allegations made.

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

Based on the above points raised, it is clearly established that the lawful basis for the required disclosure of personal information is in compliance with section (3)(4) of the Data Protection Act and thus no breach of Act has been found.