

Ref. No:- DPO/DEC/15

This is a summary of the Decision of the Commissioner.

I received 2 complaints concerning the issue of fidelity or loyalty cards on complainants' name and those of their family members without their consent. The complainants wondered whether this was in accordance with the data protection law.

My office opened an inquiry and the respondent was required to explain how he obtained the personal data of those to whom he has sent fidelity cards. The latter informed that he has only 2 sources for building his database namely the Telephone Directory and knowledge of his employees.

I observed that respondent has not proven that the complainants were his customers and has simply argued that section 24(2)(b) of DPA is applicable in the circumstances and there is no requirement to obtain the prior consent of the Complainant since the processing of personal information is *"for the taking of steps required by the data subject prior to entering into a contract"*. It has not been established by Respondent on a balance of probabilities that these specific criteria have been met.

A data controller using section 24 (2) (a) & (b) as legal grounds in the context of the conclusion of a contract cannot extend it to justify the processing of data going beyond what is necessary: he will need to legitimise the extra processing with a specific consent to which the requirements of section 24(1) will apply.

The data controller has the obligations, under sections 22 (1) and (2) with regard to the requirements of lawfulness of the processing, to inform the data subjects *at the time* of collection of their personal data of the purposes for the collection and of their right to access such data. It has not been

established by Respondent on a balance of probabilities that these specific criteria have been met.

Using the phone numbers in the MT directory for marketing purposes by a third party, i.e Respondent, is considered to be such an incompatible purpose, in contravention of section 26(b) of the DPA.

It is also essential to emphasize that the right to object provided for in section 30 of the DPA and the obligations contained in section 24 are also subject to the general requirements contained in section 22. Personal data collected unlawfully cannot be deemed to be justified under section 24 of the DPA.

After independent confirmation from the relevant sources concerning the veracity of the statements of Complainants supported by the Mauritius Telephone Directory and the examination of the database of Respondent, the commission of an offence under section 22 of the DPA is found proved beyond reasonable doubt by Respondent and the matter is thus referred to the Police under section 20 of the DPA for the institution of prosecution proceedings.