

This is a summary of the decision of the Commissioner.

IN THE MATTER OF:-

Complainant {Senior Human Resource Executive in a public hospital}

VERSUS

Respondent No.1 {Assistant Manager, Human Resources of a Ministry}

Respondent No.2 {Senior Chief Executive, Head of Respondent No.1}

The Data Protection Office received a complaint by email from Complainant against Respondent No.1 regarding a complaint on request for sensitive personal data without consent.

This office received an official complaint form and declaration form from Complainant where he stipulated that:

- (i) Paragraph 22.15 of Recommendation 1 of the 2013 PRB Report, recommended that officers with disabilities should be eligible for one additional day of casual leave. In line with this recommendation, he has applied for this additional leave which has not yet been granted so far for unknown reasons.
- (ii) In this connection, he reported a dispute at the concerned Commission.
- (iii) Respondent No.1 was representing the Ministry at the concerned Commission. Complainant stated that he has been registered as a disabled person at the concerned Ministry and has submitted a Medical Certificate to the concerned Commission and to Respondent No.1's Ministry. Furthermore, he has submitted to the concerned Commission a copy of a letter which he had received from the concerned Ministry which entitles him to concessionary airfare as he is suffering from a disability.
- (iv) However, Complainant alleged that without his knowledge, Respondent No.1 wrote to the concerned Ministry regarding the issue of the letter on concessionary airfare and sought information about his disability which he thought is not appropriate and had contravened the Data Protection Act.
- (v) He also stated that a disciplinary action was instituted against him on the basis of the complaint lodged to this office.

The Data Protection Office opened an enquiry and informed Respondent No.1 about the complaint. She was requested to provide clarifications on the allegations made by Complainant. A copy of the letter was also sent to Respondent No.2 (Head of Respondent No.1).

This Office received the statement of Respondent No.2 as follows:

- *Respondent No.1 was acting for and on behalf of and representing the Government Institution before the concerned Commission in a case of dispute between Complainant and the State of*

Mauritius.

- *The purpose of seeking additional information with regard to the ‘disability’ of Complainant from the concerned Ministry was to ascertain whether the latter was really ‘disabled’ as claimed by him.*
- *The express consent of Complainant was not sought in pursuance of section 24(2)(a) of the Data Protection Act (DPA).*
- *The labour dispute which was thereafter referred to the Tribunal, has been set aside by the Tribunal on 29 October 2015.*

This office has also received a copy of the award of the Tribunal regarding the dispute between Complainant and the State of Mauritius. In this document, the Tribunal stated that the Disputant(Complainant) has failed to prove on a balance of probabilities that he is an employee with disability and point in dispute No.1 found in the award was thus set aside.

Due to lack of further cooperation from Complainant to this enquiry and more importantly the investigation having not revealed the commission of any offence in view of section 24(2)(e) for the purposes of the administration of justice and section 25(2)(a)(i) in relation to the employment of Complainant, the Data Protection Commissioner concluded that no offence has been proven under the Data Protection Act.