

REF.NO:-PMO/DPO/DEC/1

IN THE MATTER OF:-

Complainant

VERSUS

Respondent No.1

Respondent No. 2

Respondent No. 3

A complaint was lodged on 21 July 2010 at the Data Protection Office under section 11 of the Data Protection Act whereby the complainant alleged that unauthorised use of his curriculum vitae was made by respondents nos. 1, 2 & 3 respectively to the effect that:-

‘Complainant’s company had a contract with respondent no.1 for the implementation of a Food Security Management System (HACCP – MS 133) project at respondent no.2 (a beneficiary of respondent no.3), which has been cancelled by complainant himself for non-fulfillment of the terms of the said contract.

By virtue of the cancellation, the complainant has officially written to the respondent no.1 requesting the latter not to use or process his curriculum vitae.

The complaint was further reformulated on 19.11.10 whereby complainant further alleged that:-

“Respondent no.1 has acted in bad faith and breach of contract by using the curriculum vitae of complainant to obtain financial benefit for his client, namely respondent no. 2 from a public institution, namely respondent no. 3.

Respondent no.2 has acted in bad faith by using the curriculum vitae of complainant to obtain financial benefit from a public institution, namely respondent no.3.

Respondent no.2 has acted as an accomplice with its consultant, namely respondent no.1 to defraud complainant.

Respondent no. 3 has failed to recognise the right of complainant by not stopping to use his curriculum vitae when requested to do so.”

The Data Protection Commissioner has decided as follows:-

The evidence ushered during the enquiry illustrates that no unauthorised or unlawful use of the personal data, namely the curriculum vitae of the complainant containing his personal details, has been made by respondents nos.1, 2 & 3, in view of the fact that the project for the implementation of a Food Security Management System (HACCP-MS 133) at respondent no.2, by respondent no.1 was implemented by the latter without the use of the personal curriculum vitae of complainant as consultant. The latter was further informed by respondent no.1 through phone that his services would not be required as consultant for the project.

It has thus come to light that the curriculum vitae which was communicated electronically by complainant to respondent no.1, was not used to secure any contract and/or funding by the latter with respondent no.3. Respondent no. 1 further informed respondent no.3 that complainant was not hired as consultant for the project.

At the written request of the Commissioner, respondent no.3 further returned the curriculum vitae of complainant to him through the medium of this office by way of letter dated 8.10.10, guaranteeing that the curriculum vitae was not used for the benefit of the project nor has the enquiry revealed any evidence to the contrary. The curriculum vitae was included in the file sent for application of funds by respondent no.2 to respondent no.3.

A site visit was further carried out at respondent no.1 company's premises on 22.03.11, with his consent, by this office and no evidence of any personal data relating to complainant was found on the hard drive nor external media storage of the computer of respondent no.1 as the latter has deleted all personal data of complainant which shows that he has no intention to use it in the future.

The Commissioner has found no incriminating evidence against respondents nos. 1, 2 & 3 respectively to conclude beyond reasonable doubt, that *mala fide* use and/or disclosure of the curriculum vitae of complainant has been made by them.

Complainant has further by way of statement recorded at this office, stated that given respondent no. 3 has returned his curriculum vitae and all respondents have endeavoured not to use it for the above-mentioned project of respondent no. 2 nor any other project, he is satisfied with the outcome of the enquiry.

The complaint is therefore set aside under sections 26(a) & (b) and 28 of the Data Protection Act as the offence has not been proved beyond reasonable doubt. The curriculum vitae was not used or disclosed in any manner incompatible with the purposes for which the data was collected and processed and was further kept only for the lawful purposes for which the data was collected and processed. When the purpose for keeping the data had lapsed, respondents deleted and/or removed all data pertaining to complainant within their possession.

**Mrs Drudeisha Madhub
Data Protection Commissioner
Data Protection Office
Prime Minister's Office
4th floor, Emmanuel Anquetil Building,
Port Louis
28.03.11**