

REF.NO:-DPO/DEC/5

IN THE MATTER OF:-

Complainant

VERSUS

Respondent

A complaint was lodged on 17December 2010 at the Data Protection Office under section 11 of the Data Protection Act against respondent for unauthorised marketing whereby the complainant alleged that on the same day at around 13.17 p.m, the latter received a call from someone claiming to call on behalf of respondent. The call originated from telephone number (...). The person said that he got complainant's number from Orange. The person further claimed that complainant was very lucky to have won a 50% off discount on the training courses respondent is offering. Complainant stated in his complaint that he has never played any game to receive this discount nor has he granted written authorisation to Orange to disclose his private phone number to any third party.

Complainant has requested an enquiry by this office as to how the leakage of his private mobile number has taken place.

Mauritius Telecom informed this office that complainant's number (...) is not within the public domain and is registered as a prepaid SIM in their system. Also, it is not the policy of MT/Cellplus to disclose details of subscribers to third parties. MT is also neither in any business relationship or partnership with respondent.

The enquiring officer contacted respondent and arranged a meeting on 10th May 2011 whereby he was informed about the implications of marketing by phone with emphasis on Part IV of the Data Protection Act. The enquiry has further revealed that respondent was not aware of the provisions of the Data Protection Act.

Respondent informed the enquiring officers by way of a written declaration dated 13.05.11 that he provides training courses to Mauritians in order to promote ICT knowledge and his aim is to create maximum awareness of ICT amongst Mauritians. The marketing process by phone also allegedly aims at creating an awareness of ICT by respondent of the ICT packages offered by him to the general public.

Respondent has stated that he is not in partnership with Orange/Emtel for marketing activities but does marketing to all the customers of Emtel and Cellplus. Respondent has further stated that the customers who are called in this campaign obtain 50% discount to follow any course, whereas other persons or companies who make a normal course request do not benefit from 50% discount.

Respondent stated that the mobile number of customers are chosen at random to contact them and the company does not phone customers anonymously as they introduce themselves first and then ask for permission before talking to the customer. If the person agrees, they then proceed with their marketing, else they stop the marketing procedure immediately.

Those customer numbers who do not consent to take the call are recorded in a database, so that in the future, they are not contacted further. Respondent also keeps a database of phone/mobile numbers for those who expressly consent and are interested to take any course from respondent.

The enquiring officer informed respondent to establish a written contract for those customers who want to be contacted further with the option of opt-out incorporated in the marketing agreement. The written agreement must be duly signed by the subscriber who accepts to receive any advert concerning ICT Training course from respondent. The contract is further meant only for the purposes specified in it and cannot be used for purposes incompatible with marketing purposes unless specified in the contract. Respondent must thus ensure the written consent preferably of clients contacted by phone and stop immediately any means of marketing for those customers who no longer accept the marketing though they have initially signed consent forms to receive adverts, in accordance with section 30 of the Data Protection Act. Respondent was also informed about the requirements contained in section 22 of the Data Protection Act 2004 as regards his duty to inform targeted customers of those requirements before proceeding for marketing. The enquiring officer has also informed respondent to ensure that no prejudice or any annoyance is caused whilst conducting marketing. The customer must be able to exercise complete discretion to accept or refuse to receive any call related to courses offered by respondent and to form part of the database created by respondent for those who are interested to take any course from respondent.

Respondent was also informed to use other means as well, for example, public broadcast media such as television, radio and/ or written press for marketing purposes. Marketing by phone can only be done with express consent.

The enquiring officers scheduled a site visit on 8th July 2011 at respondent's premises and the latter showed them a list of persons (approximately 4,000 persons) in the database who have accepted to receive an advert of ICT. There was also a list of persons (approximately 50 persons) who did not consent to receive any course and as a result they were not contacted in the future. The enquiring officers also informed respondent to notify all employees and concerned stakeholders to ensure that the express consent of individuals for marketing purposes are secured before embarking on marketing ventures.

Complainant has given a written declaration dated 19.07.11 that he is satisfied by the investigation carried out by the Data Protection Office which has implemented the proper measures to remedy the matter. Complainant has also informed the enquiring officers that he has not received any call from respondent after the complaint made to this office. Respondent in his written declaration dated 13.05.11 also stated that he is satisfied with the enquiry carried out and will ensure compliance with the provisions of the Data Protection Act.

The Data Protection Commissioner has decided as follows:-

It has been proven beyond reasonable doubt that the call was made to complainant on his mobile by respondent. Respondent is thus required to ensure that he is carrying out marketing activities in compliance with the relevant provisions of the Data Protection Act particularly Part IV of the Act to avoid any harm or prejudice to the individuals concerned whilst doing advertisement through phone. Respondent is further informed that, in accordance with section 30 of the Data Protection Act, a customer has the right to ask in writing the marketer to stop or not to begin direct marketing. Failure to comply with these provisions may result in prosecution by this office.

Respondent is also required to provide a more user friendly and efficient marketing system whereby the option to deregister or opt-out is given whilst securing written consent of the customers for marketing. Respondent is further informed that the consent collected for product marketing purposes should be used solely for the described purposes and cannot be used for different and incompatible purposes with marketing unless express consent is again obtained from the customer for these different purposes.

Respondent must also ensure that the appropriate security and organisational measures are taken to protect the personal data of the customers.

MrsDrudeishaMadhub

Data Protection Commissioner

Data Protection Office

Prime Minister's Office

4th floor, Emmanuel Anquetil Building,

Port Louis

17.08.11

