

REF.NO:-DPO/DEC/8

IN THE MATTER OF:-

Complainant

VERSUS

Respondent

A complaint was lodged against respondent on 28.06.11 for alleged unlawful disclosure of the personal data of complainant whereby it was averred that:-“On 1st May 2010, I received an unsolicited SMS on my mobile number (subscribed to (.....) Network) from a third party purporting to be “(....)”, the text read as follows: “**L’Express 30/4/10 dire: La cote (....) Rs 470, (....) Rs 70 pou Rs 500 – JOIN THE WINNING TEAM, vine en foule Grand Meeting 1 May 9:30- QUATRE BORNES. (....)**”. He further averred that on 18.06.10, he called (....) to enquire into the nature of this SMS and he was informed that this was a stand alone case authorised by the (....) and prior to this, the confidential database of (....) mobile phone numbers had been supplied to the “(....)”.

An enquiry was thus opened to investigate any potential unlawful disclosure of the confidential database of (....) mobile phone numbers containing the personal data of complainant which had allegedly been supplied to an unauthorised third party, namely (....).

Complainant made a declaration to this office on 15.03.12 after a meeting was conducted with the latter at this office with the responsible investigator on 13.12.11 and following an email dated 3.02.12 by this office for the required declaration to be made. The subject matter of his complaint relate to the identity of the sender of the sms in lite on his mobile and he has further provided the alleged date, time and phone number as regards the conversation which took place with (....) at (....) on 18.06.10. Complainant has also provided a copy of the mail dated 18.06.10 at 11.51 addressed to (....) on her mail (....) wherein he refers to the phone conversation he previously entertained with the latter on the same day.

Further investigation was carried out by the enquiring officers with regard to complainant's conversation with (...) of (...) on 18 June 2010 between 11:00 and 13:00 from mobile (...) to (...).

(...) employed as Principal Marketing Officer has given a written declaration dated 29 May 2012 whereby she confirms she did not have access, at any time, to the customer database of (...) in the course of her duties. She also confirmed that, at no point in time:

- (i) did she receive any call from the complainant either on her internal business line or on her mobile phone on 18 June 2010 or on any other date;
- (ii) did she reply to any enquiry regarding alleged sms received by any (...) customer directly or indirectly to the customer on 18 June 2010 or on any other date;
- (iii) did she reveal any confidential information of any (...) customer on 18 June 2010 over the phone or otherwise.

She also stated that, as an employee of (...), she is bound by the company's Declaration of Secrecy.

(...) of (...) has informed this office in writing on 30 May 2012 that a call trace of calls made by complainant on 18 June 2010 has been effected and it is confirmed that no calls have been routed from complainant to (...) and vice-versa on the alleged date.

The enquiring officers scheduled a site visit at (...) on 8 July 2012 with the Executive Regulatory Compliance, (...). During the site visit, they were shown a call log record from the number (...) to number (...) for 18 June 2010. As informed by respondent and shown in the log, the complainant had effected one call at 11:02:20 (duration 33 seconds) and another call at 11:10:42 (duration 715 seconds) on (...), however, according to respondent, it is not possible to confirm if the call has been routed to the extension of (...) since the PABX line does not capture this information. The enquiring officers were further shown a log record of the extension number of (...) and were informed that (...) started to make calls on this number as from 11:26:38. (...) highlighted that (...) works in an open office and anyone can use the extension line. The enquiring officers were informed that (...) mobile was activated only as from 11:50:46 in the office and that a copy of the logs can only be provided on receipt of a Court's order.

Respondent by way of letter dated 8.12.11 to this office also averred that:-

- (...) is a subsidiary of (...) and owns a mobile network and provides mobile services branded under the name of (...). Customers subscribe to (...) services and enjoy a range of services which include voice and messaging services as the basic services. On subscription to the service, the customer is provided with a SIM Card, details of which are recorded in compliance to the relevant laws of the country.
- The market today enables any person or company to acquire systems and or/software whereby number ranges are input at random in the system and calls or messages are generated by the system to these numbers. Thus the system can enable the person or company to build up a database of active users of mobile phones for marketing purposes. It should be noted that such systems are independent of the mobile network of licensed mobile operators and any call or message originated by the system only transits through the mobile network to terminate on the active mobile user of the licensed mobile operator.
- With the coming into force of the Data Protection Act, (...) ensures that customers, on subscribing to (...) services, give their consent for direct marketing messages or calls on the subscription form given to the customer. Furthermore, all (...) employees including employees of (...) subsidiaries, are governed by an oath of secrecy and are fully aware of the confidentiality and security of data being collected and processed. Any disclosure of data is subject to a Court's Order being submitted by the person requesting such disclosure.

The Data Protection Commissioner has decided as follows:-

There is evidence on record to suggest that an offence may have been committed under the Data Protection Act (DPA) namely to the effect that respondent may have committed the offence of unlawfully disclosing a mobile number of a subscriber to an unauthorised party in breach of section 29 of the DPA, which offence is punishable by a fine not exceeding RS 200,000 and a term of imprisonment not exceeding 5 years.

In accordance with section 20 of the DPA, where the Commissioner finds upon the completion of an investigation that an offence may have been committed under the DPA, she shall refer the matter to the Police. The matter is thus being referred to the police for further investigation and for prosecution, if required.

Furthermore, in accordance with section 24 of the DPA, respondent bears the duty to obtain the express consent of a data subject before using the latter's personal data. In accordance with section 26 of the Act, personal information collected by respondent should be kept for specified and lawful purposes and should not be disclosed for purposes incompatible with those purposes for which the information were a priori collected. Respondent was also informed by the enquiring officers of all the relevant sections of the DPA applicable to it, in particular, Part IV of the Act with regard to the obligations devolving upon a data controller.

Mrs Drudeisha Madhub

Data Protection Commissioner

Data Protection Office

Prime Minister's Office

4th floor, Emmanuel Anquetil Building,

Port Louis

12.06.12