
HIPSSA Project

Support for Harmonization of the ICT Policies
in Sub-Sahara Africa,

**TRAINING /DATA PROTECTION LAW
KIGALI, JULY 2013**

SESSION TWO

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European
Commission



DATA Protection Commission

Establishment

Established by Law. Some Commissions are already established by provisions of the Constitution

Legal statute

Independent public body with Legal personality and financial and administrative autonomy

Appointment, term of office

Members of the Commission are appointed by the Presidential Order, upon approval of the Parliament. This is to ensure their independence from Government

The Commissioners are appointed for a term of 5 years renewable once.

Missions, Functioning

Other countries

Data Protection Authorities Survey for 2011 by International Association of Privacy Practitioners reported that 81% of DPAs from respondents had appointments by executive or some form of parliamentary appointment or endorsement or subjecting the appointment to legislature's scrutiny;

The Survey referred to above further says that on average commissioners appointed for a term of 5yrs;

The Model Law suggests the composition, judges appointed by peers, representative of the PM, people appointed by national organizations etc.

In Rwanda, they do not belong to others public institutions. This may avoid conflict of interest.



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Functions of the Commission

- Under the Model Law, the Commissioner ensure that data processor complies with the law, etc
- Other Jurisdictions:
 - The German Authority monitors compliance with DPA, freedom of info by public bodies as well as providers of telecommunications and postal services;
 - Norwegian Data Protection Authority which has existed for over 30yrs, has 40 e'yees; conducts appr. 60 audits per annum; receives 10,000 queries from the public per annum; about 2/3 are from ordinary citizens who may have experienced a breach and about 1/3 from businesses inquiring about their practices;
 - The Norwegian DPA v Google case study;



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[Complaints](#)

[Jobs](#)

[Young people](#)

- [Site tour](#)
- [Site A to Z](#)
- [Sitemap](#)
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> Latest news

- 15 February - Nursing and Midwifery Council receives £150,000 penalty**
The ICO has urged organisations to review their policies on how personal data is handled, after the Nursing and Midwifery Council was...
- 25 January - ICO blog: EU data protection reforms**
Europe has been at the top of the news agenda this week, with talk of reforms and a referendum, but for the ICO developments in...

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Sections

About Us

Legal Corner

Commissioner's Findings

Parliamentary Activities

Resources

News Room

Frequently Asked Questions

A-Z Index

Transparency

Completed Access to Information Requests

Proactive Disclosure

HOW TO FILE

A privacy complaint



The Office of the Privacy Commissioner of Canada

Psst!...A Word in Private?



Information for individuals regarding the loss of the HRSDC hard drive

The Commissioner has [launched an investigation](#) into this incident.

For more information, please see our:

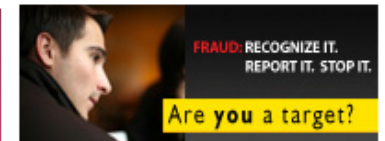
- [Frequently Asked Questions](#) about this incident
- [Identity theft resources](#)



OPC on Twitter

@ShawnHooper We should have it online shortly - we'll tweet the link once it's up. 2013-03-01 • reply • retweet • favourite

March is Fraud Prevention Month #fpm2013. Watch as OPC tweets a tip-per-day to reduce ID theft risk. 2013-03-01 • reply • retweet • favourite



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Mauritius Data Protection Commission: an analysis of its early decisions



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Abstract

- One of the functions of most data protection authorities is to decide complaints filed to them by individuals and institutions.
- In the course of passing their decisions, data protection authorities interpret data protection legislation. This article analyses the early decisions of the Mauritius Data Protection Commission from the onset of its establishment.
- The point of departure for discussion is the Mauritian Data Protection Act 2004 as well as regulations, codes of conduct, and guidelines made under such Act.
- The conclusion drawn from this analysis is that while these decisions reflect the basic data protection principles laid down in the law, they are not consistent to some extent. Similarly such decisions

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Allowances of Members

- Under the DPB, the Presidential Order determines the Allowance on Commissioners. The same with other Commission Members in Rwanda
- Other bodies: The Commission of European Communities (EU) puts the Commissioner at the level of a judge of the court of justice and deputies or assistants at the level of the Registrar of the court of justice



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Funds of the Commission

- DPB : state budget allocation
- Other means: Grant from the Government and stakeholders, income from services rented by the Commission, income from its property, donation and bequests



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Enforcement

The Commission may investigate upon any claim or complaint or on its own initiative

Decisions of the Commission may be challenged before the court



Enforcement Notice

- Where contravention established, data controller is served with an enforcement notice:
- The notice requires that the data controller should take specified steps or refrain from an action; or
- Stop processing personal information specified in the notice or for a specified purpose or in a manner specified
- An enforcement notice to include the nature of contravention and the right to appeal



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Enforcement Notice Case Studies

- **Southampton Municipality and CCTV cameras case;** The Southampton municipality had a policy that all taxis had to have CCTV cameras and audio recording. The Commissioner ruled that the processing was unlawful because it breached the **confidentiality principle** and that there had not been demonstrated that there was need.
- **Ashbury Taverns case:** In this case, the Commissioner received complaint that an access request had been denied by a data processor. The Commissioner's office issued an enforcement notice requiring Ashbury Tavern to comply with the **access** request



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- **Marks and Spenser**, the safeguards case: An agent engaged by M&S lost a computer that contained valuable sensitive personal data. Commissioner ruled that M&S should have put in safeguards to protect the information
- **“Solicitors from Hell”** case: Reinforces the link between lawful processing and human rights. The publisher said the EU convention on human rights gave freedom of expression and requested people to name and shame “their oppressor solicitors” and he added them to his list of “solicitors from hell” Information of a sensitive nature was contained in the publications. The law society sued the publisher. The court ruling in favour of the law society, held amongst others that the data had been processed in an unfair and unlawful manner, that it was not accurate, not necessary, etc



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- Norwegian v Google;
- **Canadian Regulator v Canadian Insurance Adjusters;**
Complaints were filed by consumers regarding overboard data collection approaches by Canadian insurance adjusters. The loss adjusters required claimants to sign consent forms which listed several categories of personal information which the adjusters wanted to be authorised to obtain from 3rd parties and also pass on or disclose to whomever. The Commissioner ruled that the complaint was legitimate and that an organisation was not as a condition of the supply of a service or a product, to require an individual to consent to the collection, use, disclosure of information beyond that required to fulfill the explicitly specified and legitimate purpose



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Belfast Trust (Case Study)

- News release: 19 June 2012: Belfast Health and Social Care (BHSC) Trust has been served with [a Civil Monetary Penalty](#) (CMP) of £225,000 following a serious breach of the Data Protection Act (DPA)
- The breach involved the sensitive personal data of thousands of patients and staff, and included medical records, X-rays, scans and lab results, and staff records including unopened payslips.



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Torbay Care Trust in Torquay (Case Study)

Torbay Care Trust in Torquay was fined £175,000 after it published the sensitive details of over 1,000 employees on the Trust's website. The data covered individuals' names, Dates of birth, National Insurance numbers, Religion and Sexuality



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What happened to the News of the World! (Case Study)

- The closure of the News of the World, the best-read Sunday newspaper in the English language, is a stark illustration of the reputational and commercial damage that can result from privacy-intrusive practices carried out in the name of 'investigative journalism'.
- This case demonstrates that data protection applies even in relation to the publication of material in the media. *However, in such cases, the issue to be considered in the first instance is whether a general public interest could be deemed to apply to the publication of the material.* If it does then the general requirements of data protection are set aside. However, if no public interest could legitimately be claimed, then the media must have due regard to their data protection obligations



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Example of Enforcement Notice

- Addressee;
- Jurisdiction;
- The nature of the contravention;
- Finding
- Right to appeal



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Example of Enforcement Notice

- Addressee;
- Jurisdiction;
- The nature of the contravention;
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Court Proceedings

- Appeals and reviews by data controllers;
- Civil remedies for data subjects



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