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Rules, 2022
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Author: Macmillan Keck, Attorneys & Solicitors
Attorneys, Consultants
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DRAFT
**DATA PROTECTION (COMPLAINTS AND
INVESTIGATIONS) RULES, 2022**

Government Notice No.: of 2022

DATA PROTECTION (COMPLAINTS AND INVESTIGATIONS) RULES, 2022

[DATA PROTECTION ACT, 2022]

(Cap.[74:05])

DATA PROTECTION (COMPLAINTS AND INVESTIGATIONS) RULES, 2022

under ss 12 and 39

In EXERCISE of the powers conferred by Sections 12 and 39 of the [Data Protection Act, 2022], the Authority makes the following Rules

PART I – PRELIMINARY RULES

Citation **1.** These Rules may be cited as the Data Protection (Complaints and Investigations) Rules, 2022.

Interpretation **2.** In these Rules, unless the context otherwise requires—
“Data Protection Office” means the Data Protection Office established under section 7 of the Act.

Scope of rules **3.** These Rules provide the procedures that the Authority shall follow in relation to complaints and investigations under the Act.

PART II – COMPLAINTS

Eligibility to lodge a complaint **4.** A data subject who is aggrieved by the decision, action or inaction of a data controller or data processor in violation of the Act, or any rule, regulation, or order of the Authority made under the Act, may lodge a complaint with the Authority.

Submission of complaints and other communications **5.** (1) A data subject or his or her representative may lodge a complaint with the Authority by submitting the information required in Schedule 1 to the Authority through—

- (a) any electronic submission system provided by the Authority;
- (b) email to an email address provided by the Authority; or
- (c) postal mail, courier or other hand delivery to the Authority at:

Attention: [Data Protection Office]
Malawi Communications Regulatory Authority

9 Salmin Amour Road Private Bag 261 Blantyre Malawi
or such other address as the Authority may publish on its website.

(2) If a person wishing to lodge a complaint is not able to do so in writing, the Authority will provide that person with reasonable assistance in making their complaint.

~~(2)~~(3) Complainants may communicate with the Authority at any time about a complaint pursuant to any of the means in subrule (1).

~~(3)~~(4) The Authority shall communicate with the complainant at the email or physical address provided by the complainant.

~~(4)~~(5) Blank copies of the complaint form in Schedule 1 shall be available in hard or paper copy at the Data Protection Office at the address set out in subrule 1 during normal office hours or may be downloaded from the Authority's website.

~~(5)~~(6) No fee or other charge shall be payable for submission of a complaint to the Authority.

6. (1) A data subject may request in the complaint form to have his or her identity protected from disclosure to the data controllers or data processors named in the complaint as part of the Authority's preliminary review or subsequent investigation but must explain the rationale for such a request.

(2) In determining whether to grant such a request, the Authority may consider:

(a) the likelihood of material harm to the data subject from disclosure of his or her identity to the data controller or data processor;

(b) whether the data subject has already identified himself or herself to the data controllers or data processors in relation to the matter; and

(c) whether the nature of the violation and any investigation of such violation or the relevant data controller' or data processor's ability to address the complaint would require the disclosure of the data subject's identity to the data controllers or data processors named in the complaint.

(3) The Authority shall inform the complainant of its decision to grant or reject such request as part of its determination in the preliminary review. When informing the data subject of its decision to reject the request for non-disclosure, the Authority shall inform the data subject of their right to withdraw their complaint.

Request for
non-disclosure
of data
subject's
identity

(4) If the Authority rejects the request, the complainant may withdraw the complaint as provided in these Rules.

7. (1) The Authority shall maintain a register of complaints received.

(2) Within five business days after receipt of a complaint, the Authority shall—

(a) register the complaint in the register of complaints, recording details of the data subject, any data controller or data processor alleged to have committed a violation, and the nature of the complaint; and

(b) assign a reference number to the complaint which will be referenced in all further communications with or notifications to the data subject or his or her representative.

(3) Within ten business days after registering the complaint, the Data Protection Office shall ~~determine whether to~~—

(a) ~~determine whether to~~ admit the complaint (including any determination on protecting the identity of the data subject, if applicable); or ~~reject the complaint; and~~

~~(d) reject the complaint.~~

~~(d) The Authority shall promptly notify the complainant of its determination, providing the reason therefor.~~

~~(6)~~(4) If the Authority admits a complaint but rejects a request to protect the identity of the data subject, it will not take further action until ten business days after notification of such rejection in order to allow the complainant an opportunity to withdraw the complaint.

~~(7)~~(5) The Authority may reject a complaint if, without limitation, it determines that:

(a) the complaint is submitted by any person or entity other than a data subject or his or her representative;

(b) the alleged decision, action or inaction by a data controller or data processor by which the data subject has allegedly been aggrieved, does not violate the Act, or any rule, regulation, or order of the Authority made under the Act;

(c) the alleged violation was committed more than three years prior to the date of receipt of the complaint and the data subject has not demonstrated a compelling reason for the delay;

(d) the complaint involves matters pending before another regulatory body or a court and dealing with the complaint would result in a duplicative process and waste of public resources;

(c) the complaint relates to the same subject matter of a prior rejected complaint unless the new complaint raises new issues of law or fact or circumstances have changed relating to the Authority's stated reason for the prior rejection;

(f) the data subject does not have sufficient interest in the matter to which the complaint relates; or

(g) the complaint is frivolous or vexatious.

~~(8)(6)~~ In determining whether a complaint is frivolous or vexatious, the Authority may consider whether:

(a) the complaint appears not to be made in good faith;

(b) the alleged violation or the harm caused to the data subject is trivial or minor; or

(c) the essence of the alleged violation or harm relates only tangentially to processing of personal data and more directly relates to issues of a contractual, employment, competition, consumer protection or another nature for which there are more appropriate venues and remedies.

Consolidation
of complaints

8. (1) Complainants may submit a consolidated complaint where the complaints relate to substantially the same questions of law or fact.

(2) Any complaint submitted as a consolidated complaint shall be signed by each complainant or shall be accompanied by clear and verifiable written evidence of the authorisation of any complainant, firm or other organisation to act on behalf of all complainants.

(3) If the Authority determines at any time prior to the conclusion of an investigation that two or more complaints depend on substantially the same questions of law or fact, it may:

(a) consolidate the complaints and address them in a single investigation; or

(b) treat one complaint as a test complaint and stay further action on the other(s) pending resolution of an investigation.

(4) The Authority shall notify the complainant of any such consolidation or stay.

(5) Where complaints are consolidated, they shall be treated as a single complaint and the subject of a single investigation.

(6) Where one complaint is treated as a test complaint, the Authority may take into account the findings of its investigation when determining whether to investigate the stayed complaints.

Withdrawal
of
complaints

9. A data subject may withdraw a complaint at any time prior to the conclusion of an investigation by submitting a completed withdrawal form in Schedule 2.

Security, integrity and confidentiality of personal data

10. The Authority shall implement appropriate technical and organizational measures to ensure the security, integrity and confidentiality of personal data of the data subject obtained as a result of the complaint process or an investigation and will only disclose such personal data to the extent necessary to carry out an investigation.

PART III – INVESTIGATIONS

Initiating an investigation

11. (1) The Authority may initiate an investigation:

(a) pursuant to a complaint lodged under rule 4; or

(b) of its own accord where it has reason to believe a data controller or data processor has violated or is likely to violate the Act or any regulations, rules or orders made under the Act.

(2) An investigation shall be deemed to commence when the Authority has:

(a) notified the data subject or his or her representative who lodged a complaint; and

(b) notified the relevant data processor or data controller that is the subject of the investigation, which shall include a summary of the complaint.

(3) If no contact information is available, the Authority may proceed with the investigation notwithstanding that it is unable to provide the notification under subrule (2).

(4) A data processor or data controller that is the subject of the investigation shall have thirty calendar days after the date of the notification to submit a written response to the complaint in the form of Schedule 3.

(5) The failure of a relevant data controller or data processor to submit a timely response shall not prevent the Authority from proceeding with the investigation.

Investigation procedures

12. (1) The Authority may, for the purpose of an investigation, order any person to—

(a) attend at a specific time and place for the purpose of being examined orally in relation to a complaint;

(b) produce such document, record or article as may be required with respect to any matter relevant to the investigation which the person is not prevented by any written law from disclosing; or

(c) furnish a statement in writing made under oath or an affirmation setting out all information which may be required under the order.

(2) Where material to which an investigation relates consists of information stored in any mechanical or electronic device, the Authority may require a person in possession or control of such material to produce or give access to it in a form in which it is visible and legible in a structured, commonly used and machine-readable format.

(3) The Authority may at any time facilitate negotiations between the complainant and the relevant data controller or data processor or encourage them to pursue an alternative dispute resolution process to resolve the matter among them, and may modify its investigative process taking into account such negotiations or alternative dispute resolution process.

(4) The Authority may terminate an investigation if the data subject is unresponsive to requests or communications from the Authority, is otherwise uncooperative, or reaches settlement of issues identified in the complaint with the relevant data controller or data processor.

(5) Unless a complainant withdraws the complaint, a settlement between the complainant and the relevant data controller or data processor does not limit the Authority's power to continue its investigation and make such enforcement orders as it considers appropriate under the Act.

PART IV – ORDERS OF THE AUTHORITY

13. (1) Upon conclusion of an investigation, the Authority shall issue a written order, which shall include:

- (a) a summary of the relevant issues raised in the complaint, if applicable;
- (b) a summary of the findings of the investigation;
- (c) the Authority's determination of whether there are any violations of the Act, or any rule, regulation, or order of the Authority made under the Act; and
- (d) any remedy that it imposes.

(2) If the Authority finds that a violation occurred, the order shall constitute an enforcement order under the Act.

(3) The Authority shall provide the data controller or data processor, and if applicable, any data subject who lodged a complaint leading to the investigation, a copy of the order.

14. (1) An enforcement order may, among other things, order—

Order at the
conclusion of
an
investigation

Enforcement order

- (a) the data controller or data processor to remedy the violation;
- (b) the data controller or data processor to pay compensation to a data subject who suffers injury, loss or harm as a result of a violation;
- (c) the data controller or data processor to account for the profits made out of the violation; or
- (d) the data controller or data processor to pay a fine of K5,000,000.

(2) When making an enforcement order, the Authority shall take into account any remedy that a relevant data controller or data processor has agreed to provide to the complainant.

Offence

15. Pursuant to section 42 of the Act, a data controller or data processor who fails to comply with any enforcement order issued by the Authority commits an offence for which such data controller or data processor is liable to a fine of K5,000,000 and imprisonment for two years.

Judicial review

16. A person who is not satisfied with any order issued by the Authority may apply to the High Court within thirty days after the date the order was made for judicial review thereof.

No limitation on civil remedies

17. Nothing in these Rules shall limit the rights of a data subject, or a recognized consumer organization acting on behalf of a data subject, from seeking to recover damages from a data controller or data processor by way of civil proceedings in the High Court as permitted by section 44 of the Act.

SCHEDULE 1 – Complaint form

Please fill in all the boxes below. Where the requested information is not applicable, please insert “n/a” to the corresponding section.

Name of data subject	
Name of authorised representative of the data subject (if any)	
Address of data subject or authorized representative (Attach sketch map to data subject’s residential address)	
Phone number of data subject or authorised representative	
Email address of data subject or authorised representative, if available	
If the data subject is represented by a third party, provide a copy of documentation confirming that the representative is duly appointed by the data subject for representation in all matters relating to the complaint and any investigation by the Authority	
Full name of the data controller(s) or data processor(s) that is/are allegedly in violation	
Address(es), if available, of such data controller(s) or data processor(s)	
Description of the alleged violation and supporting documentary evidence (Please provide as much detail as possible, e.g., the type of personal data involved, the purpose for which it was processed, the nature of the violation, all relevant communications, screenshots, etc.)	
Name(s) and address(es), phone number(s) and email address(es) of any relevant third party(ies) that may have information about the alleged violation	
Efforts taken to date to resolve the issue (please describe all actions taken to date), or a description of why any such efforts	

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are not feasible or appropriate. Include copies of any communications with the data controller or data processor to resolve the issue (letters, e-mails, screenshots of communications, etc.)	
The desired outcome or remedy	
If you do not wish your identity to be disclosed to the data controller or data processor or any third party, please indicate this and explain the reasons	

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Certification

I hereby certify that, to the best of my knowledge, the provided information is true and accurate.

Data subject's first name:

Middle name/initial:

Data subject's surname:

Representative's name (if applicable):

Date:

Signature of data subject/representative:

SCHEDULE 2 – Request to discontinue or withdraw a complaint

Complaint reference number	
Please briefly explain reason for discontinuation or withdrawal of complaint	

Certification

I hereby certify that, to the best of my knowledge, the provided information is true and accurate.

Data subject's first name:

Middle initial:

Data subject's surname:

Representative's name (if applicable):

Signature of data subject/representative:

SCHEDULE 3 – Response to complaint

Complaint reference number	
Please briefly provide a response to any allegations made in the complaint and attach any supporting documentary evidence.	

Certification (by Secretary or equivalent if not a natural person):

I hereby certify that, to the best of my knowledge, the provided information is true and accurate.

First name:

Middle initial:

Surname:

Title:

Date:

Signature: