



Kenya Tea Development Agency Holdings Ltd

DATA PROTECTION COMPLAINTS HANDLING GUIDELINES

Version One (1)

JULY 1, 2023

KENYA TEA DEVELOPMENT AGENCY HOLDINGS LIMITED

DATA PROTECTION COMPLAINTS HANDLING GUIDELINES

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1.0	Initial issue	01 st July, 2023

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DATA PROTECTION COMPLAINT HANDLING GUIDELINE

1. Introduction

The Data Protection ACT 2019, KENYA gives effect to Article 31(c) and (d) of the Constitution that contains the right to privacy which is a fundamental human right. The Data Protection Bill which has been a subject of discussion for a number of years was passed into law on 8th November 2019. There has been an increase in the adoption and implementation of data protection laws and frameworks by countries at large. The frameworks and laws have developed mainly in response to technological advances which increase the collection, holding and dissemination of personal information as well as surveillance of people.

2. Data Subjects

Data subjects are any natural living individuals whose personal data KTDA processes (collects, obtains, stores, retains, disposes of etc.).

Data subjects can include Board members, Factory Directors, staff members, students, applicants, prospective applicants, clients, contractors, visitors, individuals captured by the organizations CCTV cameras, buyers, suppliers, etc.

3. Data Protection Committee (Team)

Data Protection Team (Finance and Strategy, Group ICT, Sales and Marketing, Operations, Legal, Group Human Resources and Group ERM and Group Corporate Affairs);

4. Complaint

A complaint is an expression of dissatisfaction about the organizations handling of a data subject's personal data or the data of the individual they represent. This can also include dissatisfaction with how the organization has responded to a previous data request.

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5. Key Terms

Personal Data	Information relating to or revealing an identified or identifiable natural person this being a “data subject”
Sensitive Personal Data	Data on a person’s race, origin, political opinion, religion/similar beliefs, health, sexual orientation, (alleged) offences, court proceedings, biometrics, cctv footages, etc.
Data Controller	A natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purpose and means of processing of personal data.
Data Processor	A natural or legal person, public authority, agency or other body which processes personal data on behalf of the data controller.
ODPC	Office of the Data Protection Commissioner_.

The data subject may lodge a complaint using the following:

- a) Form – (uploaded on Chai Web);
- b) Orally - subject to section 56(3) of the Act; and
- c) Online by email to the Data Protection Team or the Group Head - ERM's Office. ktdadpo@ktdateas.com or (dogutu@ktdateas.com or)

The complaint may be lodged by:

- a) The complainant in person;
- b) A person acting on behalf of the complainant;
- c) Any other person authorized by law to act on behalf of the that person; and
- d) Anonymously.

The Data Protection (Compliance and Enforcement) Regulations, 2021 5 (3) the office shall protect the identity of the complainant where the request to protect the identity is sought by the complainant.

Upon receipt of the complaint the Data Protection Team/ Group Head - ERM's Office shall:

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- a) In writing acknowledge receipt of the complaint to the data subject;
- b) The office shall register the complaints and shall keep and maintain an up to date Register of complaints; and
- c) An entry in to the register of complaints shall state the particulars of the complainant and the complaint filed.

6. Screening of Complaints

- ❖ A complaint shall, upon being entered into the register, be screened by the Office;
- ❖ The Office may, upon screening the complaint:
 - a) Admit the complaint; and
 - b) Where appropriate, advise the complainant in writing that the matter is not within the mandate of the office.
- ❖ Advise the complainant that the matter lies for determination by another body or institution and refer the complainant to that body or institution;
- ❖ The office may decline to admit a complaint where the complaint:
 - a) Does not raise any issue under the Act;
 - b) Is trivial, scandalous or vexatious; and
 - c) Not made in good faith.
- ❖ Upon the screening of a complaint, the office may:
 - a) Conduct an inquiry into a complaint;
 - b) Conduct investigations;
 - c) Undertake or facilitate mediation
 - d) Conciliation or negotiation in accordance with these Regulations;
 - e) Use any other mechanisms to resolve a complaint; and
 - f) Discontinuation of a complaint.
- ❖ The Data protection office/ Group Head - ERM's Office. may discontinue a complaint where:
 - a) A complaint does not merit further consideration; and
 - b) A complainant is required to communicate with the Office and fails or neglects to communicate without justifiable reasons.

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- ❖ The office shall record the reasons for discontinuation and shall notify the complainant accordingly.
- Withdrawal of a complaint; A complainant may, withdraw a complaint at any stage during its consideration and before a determination is made; and
 - Where a complaint has been withdrawn it may be deemed to have been settled.

7. Joint Consideration of Complaints

Where two or more complaints are lodged in which the same or similar allegations are raised against a respondent, the Data Protection Team/Group Head - ERM's office will/may:

7.1 Consolidate the Complaints

- Treat one complaint as a test complaint and stay further action on the other complaints pending resolution of the test complaint;
- The decision on a test complaint shall apply, with necessary modifications, to all other complaints with which the test complaint was consolidated; and
- The DPO/ Group Head - ERM's Office shall in writing communicate to the parties any decision made under this regulation.

7.2 Notification of a Complaint to the Respondent

Upon admission of a complaint, the Data Protection Team /Group Head - ERM's Office shall notify the respondent and require the respondent within fourteen days to—

- Make representations and provide any relevant material or evidence in support of its representations; and
- Review the complaint with a view of summarily resolving the complaint to the satisfaction of the complainant.

7.3 Investigations of a Complaint

- In investigating a complaint, the Data Protection Team /Group Head - ERM's Office may, issue summons out in the Schedule requiring the attendance of any person at a specified date, time and place;

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- b) Examine any person in relation to a complaint;
- c) Administer an oath or affirmation on any person during the proceedings;
- d) Require any person to produce any document or information from a person or institution; and
- e) On obtaining warrant from the court, enter into any establishment or premises and conduct a search and may seize any material relevant to the investigation.

On completion of the investigation, the Data Protection Team / Group Head - ERM's Office shall prepare an investigation report.

Upon the conclusion of the investigation, the Data Protection Team / Group Head - ERM's Office shall make a determination based on the findings of the investigations.

The determination shall be in writing and shall state:

1. The nature of the complaint;
2. A summary of the relevant facts and evidence adduced;
3. The reasons for the decision;
4. The remedy to which the complainant is entitled;
5. Any other relevant matters.

If the complaint is not determined through negotiations, mediation or conciliation, the Office shall proceed to determine the complaint as provided for in the Act and its Regulations.

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8. Data Protection Complaints Guideline Flowchart

