

Case 202000892

Enforcement Order

Department of Agriculture

12 July 2021

EXECUTIVE SUMMARY

A member of the public submitted a complaint to the Ombudsman under the Data Protection Act (2021 Revision) (DPA) against the Department of Agriculture (DoA). The complainant claimed that the DoA was unnecessarily collecting personal data from individuals who were purchasing retail goods such as plants and trees.

The Ombudsman found that the DoA contravened the first and third data protection principles of the DPA by collecting personal data of retail customers excessively, without providing a privacy notice, and without a legal basis.

The Ombudsman ordered the DoA to cease collecting personal data of retail customers purchasing goods such as plants and trees, to delete any personal data collected without a legal basis, and to provide data subjects with a privacy notice when their data are being collected, within 30 days.

A. BACKGROUND

- [1] On 25 November 2020, we notified the DoA of a complaint we had received against them under section 43 of the DPA. The DoA is a data controller as defined in section 2 of the DPA.
- [2] The complainant was concerned about the DoA's practice of collecting and storing what he felt to be unnecessary personal data of customers who were buying low-cost, non-life-threatening goods such as plants and fruit trees from the DoA's retail location.
- [3] The DoA confirmed that it requires its retail customers to provide specific personal data when purchasing any retail goods, including:

- a. full name;
- a. street address;
- b. mailing address;
- c. district;
- d. Telephone contact – home, mobile and work; and
- e. Email address.

B. CONSIDERATION OF ISSUES

First data protection principle – fair processing

- [4] The first data protection principle requires that personal data is processed fairly. This means that a data controller must inform data subjects in writing of: (a) the identity of the data controller, and (b) the purpose of the data processing. The data controller must also have a legal basis for the processing, i.e. the processing must meet one of the conditions in schedule 2 of the DPA.

Privacy notice

- [5] The DoA confirmed that it collects customers' personal data every time it sells a product. The personal data is collected at the point of sale by verbally requesting it from each individual who makes a purchase, and is then entered into the sales system.
- [6] There is no notification process in place to inform customers of the data controller's identity or the purpose(s) of the data processing.
- [7] Consequently, the DoA does not meet the statutory requirements for fairly processing personal data in paragraph 2 of part 2, schedule 1 of the DPA.

Legal basis

- [8] The DoA informed us that the collection of the personal data from its retail clients is not required by law. However, it believed it had a valid legal basis to process the data under a mandate from the Ministry of Finance, which - it claimed - required it to collect personal data from its customers to ensure that individuals receive a correctly issued Cayman Islands Government receipt for every transaction, and that all receipts must, at a minimum, include a customer's name and address.

- [9] The DoA advised us to reach out directly to the Ministry of Finance to obtain a copy of the purported mandate as it was not able to present us with any documentary evidence of its existence. When we contacted the Ministry of Finance, it stated that it had no record of the mandate referred to by the DoA. The DoA then conceded that the mandate did not exist, and that it did not have a legal basis to collect and process the personal data requested from its retail clients.
- [10] Therefore, the DoA is in contravention of the first principle of the DPA as it is not processing its customers' personal data fairly and does not have a legal basis for processing personal data of its retail customers.

Third data protection principle – adequate, relevant and not excessive personal data

- [11] The third data protection principle requires that the personal data that is collected by a data controller is adequate, relevant, and not excessive in relation to the purpose(s) for which it is collected or processed.
- [12] The DoA explained to us that the reason for the data collection stems from a legacy point of sale system that, it claimed, requires the DoA to input personal data to issue a bill or receipt. It appears that, as the system was used over a long period of time, requesting personal data from its retail clients became part of the DoA's internal retail sales process. Once entered, the personal data forms part of a database that allows DoA to issue receipts to its customers, bill customers, and track purchases. DoA also stated that the data collected is helpful for product returns, purchases of restricted use pesticides and tracking purchase patterns.
- [13] However, DoA subsequently told us that the point-of-sale device could be programmed not to require personal data to issue receipts or bills, and agreed that there is no real need for all customers to provide personal data to execute a sale.
- [14] Therefore, the collection of customers' personal data by the DoA is unnecessary and excessive, and this practice contravenes the third data protection principle.

Failure to address contraventions

- [15] On 30 March the DoA requested 31 days to take steps to address its non-compliance with the DPA. We agreed and provided the DoA with a list of action points to complete. We also made it clear that we would issue an Enforcement Order in case of continued non-compliance.
- [16] To date the DoA has not changed the contravening data collection practices, and it continues to require personal data from retail customers who are making a purchase.

C. FINDINGS AND DECISIONS

Under section 45(1) of the Data Protection Act (2021 Revision), for the reasons explained above, I make the following findings and decisions:

- The DoA is processing the personal data of retail customers unfairly, i.e. without providing a privacy notice and without a legal basis. I find that this is a contravention of the first data protection principle.
- The collection of retail customers' personal data by the DoA is unnecessary and excessive. I find that this is a contravention of the third data protection principle.
- I require the DoA to take the following steps within 30 days:
 - cease obtaining unnecessary personal data from retail customers.
 - delete all personal data previously collected from data subjects without a valid legal basis.
 - provide a privacy notice to data subjects when collecting their personal data, in accordance with the first data protection principle.

Under section 47 of the Law, a person who receives an enforcement order under the DPA may, within 45 days of receipt and upon notice to the Ombudsman, seek judicial review of the Order to the Grand Court.



Sandy Hermiston
Ombudsman