

Case 202300268

Enforcement Order

The Public Lands Commission

9 November 2023

SUMMARY

A member of the public submitted a complaint to the Ombudsman under the Data Protection Act (2021 Revision) (DPA)¹ against the Public Lands Commission (PLC). The complainant claimed that the PLC was unnecessarily collecting personal data from marriage officers, their staff, and visiting clients using public beaches for wedding ceremonies, and that the frequency with which the personal data was being collected was excessive.

The Ombudsman investigated the matter and found that the PLC had a legal basis for processing personal data, but the PLC contravened the DPA's first and third data protection principles by respectively not providing a privacy notice and excessively collecting personal data. Due to a lack of response on the part of the PLC, the Ombudsman had to issue an Information Order to obtain information required in the investigation.

The Ombudsman ordered the PLC to provide a privacy notice to data subjects when their data is being collected, and to cease collecting excessive personal data of individuals who are organizing wedding ceremonies on public land, or are engaging in other activities listed in section 24(2) of the Public Lands Regulations (2021 Revision) (PLR). However, the PLC may continue to process personal data that is strictly necessary for such purposes as avoiding scheduling conflicts and ensuring accountability for potential damage to public lands or facilities, such as names and contact details.

¹ In this decision, all references to sections are to sections of the Data Protection Act (2021 Revision), and all references to regulations are to the Data Protection Regulations, 2018, unless otherwise specified.

A. BACKGROUND

[1] On 2 May 2023, we notified the PLC that we had received a complaint against them under section 43. The complainant was concerned about the PLC's practice of collecting and storing allegedly unnecessary personal data of marriage officers, their staff, and visiting clients requesting to use public beaches for wedding ceremonies.

[2] My office started an investigation of this matter, but we were unable to obtain all the necessary answers from the PLC until I had issued a formal Information Order under section 44(1).

[3] On 26 June 2023, the PLC clarified that it is an enforcement entity established under the Public Lands Act (2020 Revision) (PLA) and that the non-vendor application form, which is used to collect the personal data, sets out what is required to process an application for the use of public land as per the PLR.

[4] According to the PLC, the complainant is associated with what the PLC considers a commercial entity and has filed several non-vendor applications to host marriage ceremonies for cruise ship passengers since the beginning of 2023.

[5] The PLC noted that the complainant,

... is acting as an agent for persons residing outside of the Cayman Islands, and it is the responsibility of the Public Lands Inspectorate to conduct its due diligence as part of the normal course of business of a compliance and law enforcement entity.

[6] While confirming that it does not have a standard privacy policy, the PLC stated that the entity, *"operates under the best practice, and the guidelines set out in the Data Protection Act, and the Freedom of Information Act."*

[7] The PLC further stated that,

... the [PLA] requires all persons carrying on commercial activity on public land to do so under the terms and conditions of a valid Vendor Permit. The [PLR] section 24(2)(c) waived the fees for certain categories of applicants to include Weddings, nevertheless, a non-vendor permit is required.

[8] On 10 August 2023, we requested clarification of regulations 24(1) and (2) of the PLR. In response, the PLC stated: “The section is self-explanatory, however, the same is read with section 26 of the [PLR].”

B. CONSIDERATION OF ISSUES

[9] Section 43 states:

43. (1) A complaint may be made to the Ombudsman by or on behalf of any person about the processing of personal data that has not been or is not being carried out in compliance with the provisions of this Act or anything required to be done pursuant to this Act.

...

(3) On receiving a complaint referred to in subsection (1), or on the Ombudsman's own motion, the Ombudsman may conduct an investigation.

...

[10] Section 2 defines "personal data" as follows:

"personal data" means data relating to a living individual who can be identified and includes data such as —

(a) the living individual's location data, online identifier or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the living individual;

(b) an expression of opinion about the living individual; or

(c) any indication of the intentions of the data controller or any other person in respect of the living individual;

[11] Section 45 states:

45. (1) If the Ombudsman is satisfied that there are reasonable grounds for believing that a data controller has contravened, is contravening or is likely to contravene any provision of this Act, the Ombudsman may, with a view to effecting the data controller's compliance with the provision, by way of an order served on the data controller, require that data controller to —

- (a) take specified steps within a specified time, or to refrain from taking specified steps after a specified time;*
- (b) refrain from processing any personal data, or any personal data of a specified description;*
- (c) refrain from processing data for a specified purpose or in a specified manner, after a specified time; or*
- (d) do anything which appears to the Ombudsman to be incidental or conducive to the carrying out of the Ombudsman's functions under this Act.*

[12] The first data protection principle in paragraph 1, part 1 of schedule 1 states:

First principle

1. Personal data shall be processed fairly. In addition, personal data may be processed only if

—

(a) in every case, at least one of the conditions set out in paragraphs 1 to 6 of Schedule 2 is met; and

...

[13] Furthermore, paragraph 2, part 2 of schedule 1 requires that certain information be provided to data subjects:

First principle: specified information at relevant time

2. For the purposes of the first principle personal data shall not be treated as processed fairly unless the data subject has, as soon as reasonably practicable, been provided with, at a minimum —

(a) the identity of the data controller; and

(b) the purpose for which the data are to be processed.

[14] Regulation 24 of the PLR states (my emphasis):

Organized events

24. (1) Subject to paragraph (2), a person shall not, on public land or at a facility on public land, organize an event for commercial purposes for a group of twenty-five or more persons except in accordance with the terms and conditions of a permit.

(2) This regulation does not apply to —

- (a) a tour group that stops on public land or at a facility for touring, sightseeing or a picnic;
- (b) a school group on public land for an educational purpose;
- (c) a marriage ceremony;**
- (d) a national event;
- (e) a political meeting;
- (f) a religious organization or church;
- (g) a group carrying out activities on public land in the public interest, such as cleaning up or maintaining beaches; Public Lands Regulations, 2021 Regulation 25 c SL 16 of 2021 Page 17
- (h) an event organized by a registered non-profit organization for the purposes of charity fundraising; or
- (i) a one-time non-profit fundraising event which does not require registration under the Non-Profit Organisations Act (2020 Revision).

(3) A person who contravenes paragraph (1) commits an offence and is liable on summary conviction to a fine of —

- (a) one thousand dollars in respect of a first offence; and
- (b) two thousand dollars for a subsequent offence,

and if the offence is a continuing offence, one hundred dollars for each day or part of a day during which the offence continues but not exceeding a total maximum fine of two thousand dollars for the continuing offence.

[15] Regulation 26 of the PLR states:

Application for a permit other than a vendor's permit

26. (1) Where a person wishes to apply for a permit required under these Regulations, other than a vendor's permit, the person shall apply to the Commission in accordance with the procedure set out in this regulation.

(2) An applicant under paragraph (1) shall submit to the Commission an application in writing which sets out the person's proposed use of, or activities on, public land.

(3) The application referred to in paragraph (2) shall be accompanied by —

- (a) a non-refundable application fee of fifty dollars;*
- (b) the relevant fee set out in Schedule 1; and*
- (c) such other information or particulars relating to the application as the Commission may determine.*

(4) Subject to paragraph (5), where the Commission is satisfied that the application complies with the Act and these Regulations, the Commission may issue a permit, other than a vendor's permit, to the applicant to use public land or to carry out the activity in the manner proposed in the application.

(5) A permit issued under this regulation shall be subject to such terms and conditions as the Commission may specify in order to minimize public disturbance on, or to protect, public land.

First data protection principle – fair processing

- [16] The PLC is the data controller of the personal data and data processing under review, as defined in section 2.
- [17] The first data protection principle requires that personal data be processed fairly. This means, amongst other things, that a data controller must have a legal basis for the processing, i.e. the processing must meet one of the conditions in schedule 2 (and an additional processing condition in schedule 3 if the data is sensitive personal data – which is not applicable in this case).
- [18] Also under the first data protection principle, upon collecting personal data, 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.

Legal basis

- [19] The PLC stated that its legal basis for processing the personal data in question is that its non-vendor permit application process is a public function under the PLA and PLR, and collecting the personal data is a mechanism to mitigate the risk of being unable to identify responsible persons.

[20] The PLC informed us that the collection of personal data is required by law to fulfil its mandate set out under the PLA and PLR. The PLC explained to us that the reason for the data collection is to,

... identify responsible persons should there be a breach of process or criminal damage is identified, when there is an identified abuse of the Public Lands booking process or persons circumventing the Cayman Islands revenue system. The IDs are used to identify the correct person(s) to facilitate criminal proceedings when necessary.

[21] I take this to mean that the PLC relies on one of the following conditions in paragraph 5 of schedule 2 as a legal basis for the processing of the personal data:

Processing necessary for exercise of public functions

5. The processing is necessary for —

...

(b) the exercise of any functions conferred on any person by or under any enactment;

(c) the exercise of any functions of the Crown or any public authority; or

(d) the exercise of any other functions of a public nature exercised in the public interest by any person.

[22] **Therefore, the PLC has a valid legal basis for processing personal data, as required by the first data protection principle, but only to the extent that the processing is strictly necessary to exercise its public functions under the PLA and PLR.**

Privacy notice

[23] The PLC confirmed that it collects customers' personal data in order to process permits. The personal data for non-commercial applications is collected via the non-vendor application form, and various supporting documents are required to be provided by customers. However, there is no notification process in place to inform customers of the data controller's identity or the purpose(s) of the data processing, as required by paragraph 2, part 2 of schedule 1.

[24] **Consequently, the PLC does not meet the statutory requirements for fairly processing personal data, since it is not providing the required information to the data subjects at the time their data is being collected, as is required in paragraph 2, part 2 of schedule 1 of the DPA.**

Third data protection principle – data minimization

- [25] 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.
- [26] The PLC requested personal data in the form of copies of driver’s licenses and/or passports of the marriage officer and her staff, and copies of passports of the bride and groom, every time the complainant submits an application form, which at times is more than once per week. The PLC also has a copy of the complainant’s Trade and Business License in hand. The complainant clarified that most of her customers are cruise ship passengers who are in Cayman for a single day. She does not apply for permission to use public land for local weddings.
- [27] The PLC told us that regulation 24(2)(c) of the PLR waives “the fees for certain categories of applicants to include weddings, nevertheless, a non-vendor permit is required”. However, since regulation 24(2) of the PLR annuls regulation 24(1) for marriage ceremonies, and given that the complainant’s business is to organize and preside over wedding ceremonies, she is not subject to the restriction that “a person shall not... on public land, organize an event for commercial purposes for a group of twenty-five or more persons except in accordance with the terms and conditions of a permit”, in regulation 24(1).
- [28] The PLC’s sparse response to our queries, saying that regulation 24 is “self-explanatory” -- while not very helpful for our investigation - is correct in the sense that the issue is quite simple: the complainant is not obligated to request a permit in the first place because of regulation 24(2)(c).
- [29] The PLC’s additional statement that regulation 24 should be read together with regulation 26 does not explain things any further. Regulation 26 deals with applications for a non-vendor permit, which on the above basis, does not apply to the complainant and her business, since she is not required to have a permit in order to engage in any of the activities listed in regulation 24(2) of the PLR.
- [30] Therefore, it appears that this is not a matter of the PLC “waiving the fees”, as it said, but rather a matter of there not being any legal mandate for charging a fee or requiring a permit in these circumstances in the first place.
- [31] Given that there is no statutory basis for the PLC to require the complainant to apply for a permit, there appears to be only a restricted basis for the PLC gathering a minimum amount of personal data at all.

- [32] For clarity, the PLC has a legitimate need to know who is using public land, for instance to avoid scheduling conflicts or to ensure accountability for potential criminal damage to public land or a facility on public land. Processing personal data for these limited purposes is in the public interest and would fall under the legal basis of paragraph 5(d) of schedule 2. It would be reasonable for the PLC to collect the minimum amount of relevant personal data (e.g., the name and contact information of the wedding organizer) that is strictly necessary for these purposes. If the PLC considers it necessary, it can verify the identity of the wedding organizer, but there is no reason to keep copies of driver's licences or passports for this purpose.
- [33] The data gathering undertaken by the PLC in regard to marriage ceremonies is excessive both in terms of the nature of the data and the repetitiveness of the data gathering. For the purposes stated above, it is not necessary to require a copy of a driver's license or passport of anyone, let alone the complainant's staff, the bride and groom, or for asking the complainant to submit the same personal data several times a week since that data would presumably already be held.
- [34] **Therefore, the processing by the PLC of the personal data in the form of copies of drivers' licenses and passports of anyone who wishes to use public land for a wedding ceremony, or engages in any of the other activities listed in regulation 24(2) of the PLR, is unnecessary and excessive, and this practice contravenes the third data protection principle.**
- [35] **The PLC is justified under the DPA to process personal data that is strictly necessary for such purposes as avoiding scheduling conflicts and ensuring accountability for potential damage to public lands or facilities, such as the wedding organizer's name and contact details, or the name and contact details of an individual engaging in the other activities listed in regulation 24(2) of the PLR.**
- [36] While we have not focused our investigation on the retention practices of the PLC, the personal data collected for the limited purposes discussed above (e.g., name and contact details) should only be retained for as long as required for the purposes for which it was gathered, as required by the fifth data protection principle. A very short retention period, in this instance, may require the repeated submission of the same personal data, but requiring several such submissions within the same week is excessive.

Procedural matters

[37] Although my office made it clear that we were conducting a statutory investigation, we experienced difficulties obtaining cooperation and answers from the PLC. Cooperation with the investigations of the Office of the Ombudsman is not voluntary, and data controllers are obligated to answer our reasonable questions. We prefer to rely on amicable cooperation rather than on formal orders but in this case, the PLC compelled me to issue an Information Order under section 44 before answering our basic questions.

C. FINDINGS AND DECISIONS

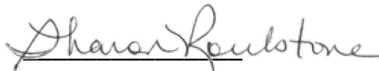
[38] Under section 45(1) of the Data Protection Act (2021 Revision), for the reasons explained above, I make the following findings and decisions:

- a) The PLC has a legal basis in paragraph 5 of schedule 2 of the DPA, but only to the extent that the processing is strictly necessary for fulfilling its legal mandate under the PLA and PLR.
- b) The processing of personal data by the PLC does not meet the requirements of the first data protection principle in schedule 1 of the DPA, since it is unfair that the data subjects are not being provided with a privacy notice, as required in paragraph 2, part 2 of schedule 1 of the DPA.
- c) The processing of the complainant's personal data by the PLC – in the form of copies of driver's licenses and passports, and requested on multiple occasions in short spaces of time - is excessive and contravenes the third data protection principle in schedule 1 of the DPA.
- d) The PLC may continue to process personal data that is strictly necessary for such purposes as avoiding scheduling conflicts and ensuring accountability for potential damage to public lands or facilities, such as names and contact details.

[39] Under section 45(1) of the DPA, for the reasons explained above, I require the PLC to take the following steps as soon as practicable, but in any event no later than 30 days after the date of this Order:

- a) The PLC is required to provide a privacy notice to the individuals whose personal data it collects and/or continues to process, in compliance with paragraph 2, part 2 of schedule 1 of the DPA (unless the PLC is exempted from doing so under part 4 of the DPA).
- b) The PLC is required to cease obtaining excessive personal data, including copies of driver's licences and passports, from individuals organizing a wedding ceremony or engaging in any other activity listed in regulation 24(2) of the PLR.

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



Sharon Roulstone

Ombudsman