

Our Ref: PROW/2020/WK/852021
Date: 8/05/ 2021

Data Protection Commissioner
Office of the Data Protection Commissioner
P.O. Box 30920 - 00100, NAIROBI CA Centre
Nairobi, Kenya

Attention: Ms. Immaculate Kassait

Dear Madam,

Your Ref: TBA



REQUEST FOR INVESTIGATIONS ON POTENTIAL DATA BREACH OF RECORDS OF HOTEL GUESTS OF RADISSON BLU HOTEL & RESIDENCE, NAIROBI ARBORETUM, NAIROBI ON AUGUST 3, 2021

The above matter refers.

We are writing to you because of an incident involving a potential data breach and online leak of the hotel guests' records of the Radisson Blu Hotel & Residence, Nairobi Arboretum, Nairobi, Kenya (Radisson) on or about August 3, 2021.

Radisson Blu Hotel & Residence
P. O. Box 46268 - 00100
NAIROBI

Background

Around August 2-3, 2021, there were various reports in sections of the media that the Deputy President of Kenya, His Excellency William Samoei Ruto had been barred from traveling to Uganda. (<https://nation.africa/kenya/news/why-dp-ruto-was-barrred-from-travelling-to-uganda-3496924>) It has been alleged that there was in the DP's entourage, a Turkish national by the name Harun Aydin. Further, various media reports on August 3, 2021, indicated that the said Harun Aydin was a person of interest within the Kenyan intelligence and/or security agencies. However, these media reports have been refuted by the Turkish Embassy in Nairobi which has declared that Harun Aydin is an investor who has visited Kenya several times in the past using his Turkish passport, and is a law-abiding citizen with no criminal records.

The Potential Data Breach

Interestingly, on or about August 3, 2021, the whole country was bewildered when controversial blogger Robert Alai, published on his social media handles, to wit, Facebook and Twitter, what appears to be a list of around thirty four (34) hotel guests from Radisson to prove that in fact the said Harun Aydin had been a guest at the Radisson. We have enclosed herein, the leaked records that include the names, rooms, and check-in/out information of the other approximate thirty four (34) guests residing at Radisson. As such, this is insufferable, inconsiderate, contumelious, and opprobrious behavior that points to wanton disregard of the privacy of hotel guests in Kenya and specifically Radisson in order to score short lived perceived political wins.

We believe that this is a serious data breach by Radisson, and infringement of the rights to privacy of all Radisson visitors whose private details have been illegally published and/or leaked. The leaked data/information if correct, indicates a serious non-committal or willful ignorance of the data privacy protection laws by Radisson. The Ministry of Tourism & Wildlife should treat this matter as a serious national threat to the already ailing Tourism Industry.

This comes at a time when the modern tourism business is facing a new challenge, to wit, an obligation to protect the privacy of guests during their stay at the hotel. It cannot be gainsaid that the duty of any hotel *inter alia* is *ab initio* the protection of guests' privacy, as it is a sacrosanct expression of respect, dignity, and psychophysical integrity of the guests.



Indeed the hotel staff is obliged to discreetly protect guests' private data and information through limited access to the cupboard at the reception desk, inserted passwords on their computers, guest's data inaccessibility by the unauthorized persons, avoiding loud pronouncing of the guest room number at key delivery and not revealing the guest's name, address, and room number. As such, any data leak, connotes serious connivance on the part of the staff and third parties, *res ipsa loquitur*.

The Law on Privacy

Kenya is amongst the few countries that have enacted robust data privacy laws. Our supreme law, the Constitution of Kenya 2010, provides at article 31 "that every person has the right to privacy, which includes the right not to have—(a)their person, home or property searched;(b)their possessions seized;(c)information relating to their family or private affairs unnecessarily required or revealed, or (d)the privacy of their communications infringed.

Further, Kenya enacted the **Data Protection 2019 (the Act)** to give effect to Article 31(c) and (d) of the Constitution; to establish the Office of the Data Protection Commissioner (**the Data Commissioner**); to make provision for the regulation of the processing of personal data; to provide for the rights of data subjects and obligations of data controllers and processors. The Office of the Data Protection Commissioner is empowered by clause 8 and 9 of the Act to receive and investigate any complaint by any person on infringements of the rights under the Act and to carry out inspections of public and private entities with a view to evaluating the processing of personal data, and to issue summons to a witness for the purposes of investigation. In light of this potential breach of personal information of the hotel guests, we demand a full investigation and inspection of the data handling systems of Radisson.

Notably, Radisson has a compounded duty of notification and communication of breach under clause 43 of the Act which provides that "where personal data has been accessed or acquired by an unauthorized person, and there is a real risk of harm to the data subject whose personal data has been subjected to the unauthorized access, a data controller shall— (a) notify the Data Commissioner without delay, within **seventy-two hours (72 hrs.)** of becoming aware of such breach. Radisson is yet to make any public statement in respect of this matter as of the date of this letter.

Penalties

In relation to an infringement of a provision of the Act, clause 63 provides that the maximum amount of the penalty that may be imposed by the Data Commissioner in a penalty notice is up to **five (5) million shillings**, or in the case of an undertaking, **up to one per centum of its annual turnover** of the preceding financial year, whichever is lower.

Recommendation and Conclusion

Amazon the parent of AWS, was on July 16, 2021 fined a record **\$886.6 million**, by the Luxembourg National Commission for Data Protection (CNPD) for allegedly violating GDPR (General Data Protection Regulation) rules. The fine represents a strong data privacy and compliance reminder to companies worldwide that manage data. Likewise, we hereby urge the Office of the Data Commissioner to conduct a thorough and speedy investigation into the potential breach of hotel guest's information by Radisson, notify the public of the outcomes, and hold accountable those found culpable. This will go a long way to prevent the recurrence of such embarrassing private data/information leaks and to protect the privacy of hotel guests in Kenya. If no action is taken, tourists and foreign investors will eschew visiting Kenyan hotels if the sanctity of their private data and information cannot be guaranteed. The Office of the Data Commissioner also ought to sensitize the hotel industry of their corresponding constitutional and contractual obligations to protect the privacy of guests. **The ball is now in your Court. Press play.**

Regards

WILLIAM KAROKI



For PROW & Company Advocates



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