

The dilemma of data protection rights

EDITOR: Leah Nakia is a senior public official. Her role entails supervising different financial institutions in Wukanda.

Leah's bank account and other financial information has been published by a media outlet. Leah finds this unprofessional and is unhappy that her bank divulged such confidential information to a third party without her consent. The bank assures Leah, that this was the single act of an unscrupulous employee and that appropriate measures have been taken to ensure it does not happen again.

The third party - media outlet - is however unapologetic and argues that given Leah's position in society, the public had a right to know the published information. And that it was simply exercising its right to freedom of expression.

Separately, a public body, the National Revenue Authority, has written to all financial institutions requiring them to furnish demographic and financial information including account turn over and balances on all accounts held, over a two-year period for purposes of tax collection and in accordance with a local tax law.

Consequently, the financial institutions through their umbrella body intend to mount a legal challenge to determine the constitutionality of the above law, given the provision for the fundamental right to privacy in Wukanda's Constitution.

Lawyer Elizooba T'challa observes that while the Constitution indeed provides for a high level right to privacy, there is no specific Privacy law and that the majority of aggrieved parties tend to seek redress under the common law breach of

confidence cause of action. He is, however, aware that the Parliament recently invited public comments on a Privacy and Data Protection Bill that seeks to give effect to the Constitutional provision for the right to privacy and comprehensively address some of these issues raised by Leah as well as the issues of contention between the financial institutions and the public body.

Notably, while the proposed law recognises the need of public body to collect customer data for revenue collection purposes, it discourages expansive, all-encompassing requests and emphasises the principle of data minimisation.

The proposed law also provides specific sanctions for breach and compensation for damages or distress as well as personal liability of officers of a corporation.

Interestingly, the proposed law does not categorise financial information as special/sensitive data requiring additional protection under the law.

Elizooba also notes that under the Constitution the right to privacy and the right to freedom of expression are not absolute but rather should be balanced against each other and are subject to such limitations as are determined by law.

Hopefully, the proposed privacy and data protection before the Parliament can be passed into law.

Julius Mboizi
Member of the Uganda Law Society

NB: The Names, characters, businesses, places, events, locales and incidents mentioned are either the products of the writer's imagination or used in a fictitious manner.

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