

Case 202300267

Enforcement Order

Department of Education Services

25 July 2023

SUMMARY

A member of the public submitted a complaint to the Ombudsman under the Data Protection Act (2021 Revision) (DPA)¹ against the Department of Education Services (DES, or the data controller). The complainant submitted a request for feedback on her job application to the data controller, and her request has not been granted to date.

After investigating this complaint, the Ombudsman issued an enforcement order, finding that the data controller contravened the sixth data protection principle and section 8 by not responding to the subject access request.

The Ombudsman ordered the DES to provide the complainant with the requested personal data regarding the job application submitted within 5 business days.

A. BACKGROUND

[1] On 20 June 2022, the complainant emailed the data controller’s Human Resources Department (HR) as follows:-

I am just following up with Teaching positions. My understanding is that the interviewing process has begun. I was told by a friend that her friend in Jamaica was interviewed for a teaching role, coming from Jamaica as a Teaching Partner, mind you I don't know the level nor school? I am just a bit concerned as I am a qualified teacher. I was offered a teaching role a few years back. I have

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 (2021 Revision), unless otherwise specified.

been a TP for two years, and I would hope to qualify for a teaching role. I have taught a lot this year, filling in weeks, up to a month, at a time. If it isn't this sort of role, please consider me for another role. I need to professionally develop; I work extreme hard and put a lot into my teaching. Could I please get feedback as to what I need to do to be considered please?

[2] On 20 June 2022, the complainant received an email response from HR, acknowledging the request with the promise to provide a response.

[3] On 24 August 2022, the complainant emailed HR again, writing:

I am just following up again to get feedback as to why I was not considered, not even having an interview, for a teaching role at JCPS, the school I have been teaching in. I had applied to teach this year, requesting Key Stage Two ideally. I have been in Year 5 for two years at JCPS. A position came up in that very year, and I wasn't considered. Could I please get feedback as to why? I am a qualified teacher, with teaching experience and 12 years in tutoring at this level and higher. I have been working as a Teaching Assistant in this specific Year. I also have my Cayman status. I am a upset as to why I would not be considered nor interviewed, and I have written three times and haven't heard back from you. A teacher from Jamaica, who has never been here before, was given the role, this confuses me when teachers are here. I have lived here for over 21 years, and have loads of teaching experience. Could I please get feedback? I want to be able to grow in my role as a teacher; I put a lot of effort into my students' education, and I am a very competent teacher. Thank you for your time.

[4] On 30 November 2022, in an email to the Deputy Director of DES, the complainant followed up once again, stating:

I am just following up again regarding my request for feedback as to why I wasn't interviewed for a teaching role this past year. Could you please give me a time frame of when I may hear back please? I look forward to hearing from you.

[5] On the same day the Deputy Director of DES responded, stating that he had included "the DES HR team in the email to see if they can provide further clarity."

[6] On 19 December 2022, an additional request was sent to the Director and Deputy Director of DES, querying if feedback would be forthcoming soon.

- [7] On 1 May 2023 the complainant made a complaint to my Office, as follows:
- a) *Multiple emails were sent from 20 June 2022 until April 2023 requesting feedback with reasons for not being considered for an interview for the recruitment of a teaching position.*
 - b) *Confirmation of receipt of the emails was provided, but no response was provided regarding the request for feedback.*
- [8] We accepted the complaint on 2 May 2023 and opened an investigation under section 43 with the above-noted case file number.
- [9] On 9 May 2023, we contacted the DES regarding the complaint, to which the Deputy Director responded by addressing the matter to their Information Manager (IM). On 11 May 2023, the FOI/ Complaints Manager stated that the Data Protection/FOI Manager in the Ministry of Education (MOE) would be able to respond regarding the complaint's timeline and the request to date. This was subsequent to the complainant filing an FOI request to the MOE via the Information Rights Unit (IRU) of the Cabinet Office.
- [10] The MOE addressed the matter under the Freedom of Information Act (2021 Revision) (FOIA), stating that the request did not provide sufficient details to identify the record(s) requested and that clarification was required. The MOE also indicated it had no previous knowledge of any requests made by the complainant and additionally conducted a search of the government's FOI case tracking system, JADE, which yielded no prior requests.
- [11] We sought clarification on why the request was handled under the FOIA and not the DPA, as the initial request appeared to be for the personal data of the applicant. MOE's Data Protection/FOI Manager responded that the complaint's wording in an email dated 2 May 2023 was not clear and did not state exactly what personal information was being requested and that the complainant could access personal data under both the DPA and FOIA.
- [12] The complainant's email to our office of that same date explained the nature of the request as follows:
- ... I had applied to teach last January 2022, for this school year 2022-2023. I am a certified teacher, Caymanian, with experience, and instead they hired someone abroad to work in the exact Year group I had been working in for two years. I have asked for feedback since last summer and I have yet to receive any information why an immigrated teacher would be hired over me.*

I hope for clarity in this matter.

- [13] On 12 May 2023, we sought clarification regarding the division of labour in regard to the recruitment process between MOE and DES, as well as the status of the follow-up request of 24 August 2022 (quoted above).
- [14] On 16 May 2023, the MOE clarified that: *“DES is responsible for the recruitment for all educators and onboarding. MOE is responsible for all other recruitment.”* The MOE further advised that the DES’s IM is looking into our queries regarding the subsequent request made on 24 August 2022 and would revert as soon as possible.
- [15] To date, no further response has been received.

B. CONSIDERATION OF ISSUES

- [16] 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.

...

- [17] 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;

[18] 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.*

[19] The sixth data protection principle in part 1 of schedule 1 protects the rights of a data subject as it relates to their personal data. It states:

6. Personal data shall be processed in accordance with the rights of data subjects under this Act.

[20] Sections 8(1)-(2) state:

(1) A person is entitled to be informed by a data controller whether the personal data of which the person is the data subject are being processed by or on behalf of that data controller, and, if that is the case, to be given by that data controller a description of —

- (a) the data subject's personal data;*
- (b) the purposes for which they are being or are to be processed by or on behalf of that data controller;*
- (c) the recipients or classes of recipients to whom the data are or may be disclosed by or on behalf of that data controller;*

- (d) any countries or territories outside the Islands to which the data controller, whether directly or indirectly, transfers, intends to transfer or wishes to transfer the data;*
- (e) general measures to be taken for the purpose of complying with the seventh data protection principle; and*
- (f) such other information as the Ombudsman may require the data controller to provide.*

(2) A data subject is entitled to communication in an intelligible form, by the relevant data controller, of —

- (a) the data subject's personal data; and*
- (b) any information available to the relevant data controller as to the source of those personal data.*

[21] Section 8(4) requires that a request is made in writing.

[22] Section 8(6) requires that a data controller responds to a section 8 request within thirty days.

[23] The complainant made a written request to the data controller on 22 June 2022, and sent several subsequent reminders, asking for her personal data, i.e., information relating to her application for a teaching position, including “feedback”, which is “an expression of opinion” about her, and an “indication of the intentions of the data controller” in respect of her. The data controller should have recognized these as a request for the complainant’s personal data under the DPA, and should have responded accordingly.

[24] The data controller did not give any reason for failing to provide a response to the subject access request, e.g., due to reliance on an exemption in part 4 of the DPA.

[25] In particular since the original request was made to the DES’s HR office, and subsequent correspondence was addressed to the Director and Deputy Director, there appears to be no excuse for the lack of responsiveness on the part of the DES.

[26] **Consequently, I find that the data controller failed to meet its obligations under the sixth data protection principle and section 8 of the DPA to respond to a request for personal data.**

C. FINDINGS AND DECISIONS

[27] Under section 45(1) of the DPA, for the reasons explained above, I make the following findings and decisions:

(a) Sixth data protection principle:

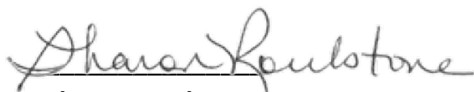
The data controller did not respect the rights of the complainant under the sixth data protection principle of part 1 of schedule 1 of the DPA.

(b) Section 8:

The data controller has not complied with sections 8(1), (2) and (6) of the DPA.

[28] I require the data controller to provide a response to the complainant's request in compliance with section 8 of the DPA, within 5 business days from the date of this Order.

[29] 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