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**DECISION OF THE ESWATINI COMMUNICATIONS COMMISSION IN THE  
EXERCISE OF ITS FUNCTIONS AS THE ESWATINI DATA PROTECTION  
AUTHORITY ON CONTRAVENTION OF THE DATA PROTECTION ACT  
2022 BY SINCEPHETELO MOTOR VEHICLE FUND (SMVA)**

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## **I. INTRODUCTION**

The Eswatini Communications Commission is a regulatory authority established by the Eswatini Communications Commission Act, 2013 to regulate the electronic communications sector. In March 2022, the Data Protection Act was passed to provide for the collection, processing, disclosure and protection of personal information. Section 5 of the Act designates the Commission as the Eswatini Data Protection Authority herein referred to as the EDPA, charged with the responsibility to administer the Act and enforce compliance thereto.

## **2. DISCLOSURE OF PERSONAL INFORMATION BY SMVA IN THE PRINT MEDIA**

On the 1<sup>st</sup> August 2023, the EDPA's attention was drawn to a publication by SMVA of certain personal information of about 1700 road traffic accident survivors hereinafter referred to as claimants in a five-page spread Notice in the ESwatini Observer dated 01 August 2023 titled "**Notice: Medical Undertakings**". The EDPA, acting on the strength of section 35(2) initiated an investigation into the publication of the Notice.

The Notice contained the following particulars of the claimants:

1. The claim number;
2. Full names of the claimants;
3. The National Identity Number or Graded Tax Number.

### 3. ANALYSIS BY THE EDPA

Processing of personal data is regulated by section 9 of the Act which defines personal information as *"information about an identifiable individual that is recorded in any form....including any unique identifying number, symbol or other particular assigned to the individual"*. An analysis of the Notice leads the EDPA to hold the *prima facie* view that the publication of the National Identity Numbers of the claimants is unlawful. The disclosure of such information breached the data minimization principle enshrined in the Act and served no purpose as the claimants were also advised in the same Notice to bring their National IDs for ease of verification.

### 4. POWERS OF THE EDPA

The EDPA, in the exercise of powers vested by section 41 of the Act, issued an Enforcement Notice to SMVA, on the 1<sup>st</sup> August notifying of the unlawful disclosure of personal data of the claimants and directed SMVA as follows:

- I. To notify the EDPA of a data breach in terms of Section 17 of the Act within 48 hours of receipt of the Enforcement Notice
- II. To notify the affected data subjects (claimants) of the data breach within 48 hours of receipt of the Enforcement Notice
- III. To forthwith cease publication or disclosure of the specified aspects of personal information, specifically the National Identity Numbers and/or Graded tax Numbers of the claimants.
- IV. To direct Eswatini Observer to destroy and/or de-identify the publicised identity numbers and Graded Tax numbers of the claimants within 24 hours of receipt of the Enforcement Notice
- V. To publish in the media an apology to the claimants whose identity and graded tax numbers had been disclosed in the Notice within 24 hours of receipt of the Enforcement Notice; and
- VI. To show cause within 48 hours why the EDPA should not impose an administrative fine as a sanction for the above-mentioned breach of the Act.

## 5. REPRESENTATIONS BY SMVA

On 2<sup>nd</sup> August 2022, the EDPA, acting in accordance with section 35(a) and (b) as read with 37(b) met with SMVA to receive representations on the matter and guide SMVA on how to implement the EDPA's directive as enunciated in the Enforcement Notice. Consequently, SMVA complied with the directives and the Notice was re-issued in the Times of Eswatini, this time without the disclosure of the National Identity numbers or Graded Tax Numbers of the claimants.

## 6. MITIGATION BY SMVA

Pursuant to the directive to show cause why the EDPA should not impose an administrative fine as a sanction, SMVA submitted, *inter alia*, that:

- I. The Notice was published with the sole intention to update the records of the claimants for purposes of performing contractual obligations owed to them in respect of providing medical care as recommended by doctors;
- II. The claimants had no reliable contact numbers and postal addresses;
- III. SMVA had inadvertently flouted the Act for the first time and was caused by a misapprehension of the Act than ignorance thereof.
- IV. SMVA has demonstrated remorse and promptly met with the EDPA for guidance on the Directive;
- V. SMVA implemented all the directives of the EDPA within 24hrs.

## 7. FINDINGS OF THE EDPA AND REASONS

The EDPA has considered the matter in its totality and has determined that SMVA has breached the Data Protection Act by disclosing, without any lawful reason, about One Thousand Six Hundred (1600) National Identity numbers and about Sixty-Three (63) Graded Tax numbers of claimants in a newspaper circulating widely around the country and available also on on-line platforms.

- 7.1. The National Identity Number of an individual falls within the ambit of personal information under Section 2 of the Act and is protected against unlawful disclosure. Additionally, Section 2 defines an "identifiable person" as "*an individual who can be identified, directly or indirectly, in particular, by reference to an identification number or to one or more factors specific to one's physical, physiological, mental, economic, cultural*

*or social identity taking into account all the means reasonably likely to be used either by the controller or by any other person to identify the said person".*

- 7.2. The Act also prescribes that age is personal information that is also protected against unlawful disclosure. In this instance, it is common cause that the National Identity Number of an individual is not just a number assigned to that individual but also reveals other protected aspects of personal information such as year, month and date of birth.
- 7.3. The disclosure of National Identity numbers exposes the claimants to identity theft and other potential fraudulent activities carried out on their personal information because the Notice also contains the names of the claimants against the respective IDs.
- 7.4. The copies of the Eswatini observer had already been widely distributed and in possession of members of the public locally and internationally through online platforms.
- 7.5. The unlawful disclosure affected a large number of data subjects and thus the likelihood of harm to the claimants occasioned by the breach is considered significant by the EDPA.
- 7.6. SMVA showed remorse by promptly taking action to engage with the EDPA for guidance on the Enforcement Notice issued.
- 7.7. SMVA acted on the Enforcement Notice within 24hrs of issue thereof.
- 7.8. SMVA has committed to train its staff on the pertinent provisions of the Act.

## 8. SANCTION

In light of the foregoing, the EDPA in the exercise of its enforcement powers under Section 6(4)(b) of the Act, hereby imposes a fine of **E150,000.00** (One Hundred and Fifty Thousand Emalangeni).

- 8.1. One Hundred Thousand Emalangeni (E100,000.00) is suspended for a period of Two (2) years on condition that SMVA is not found to have breached the Act within the suspended period.
- 8.2. Fifty Thousand Emalangeni (E50,000.00) is payable within a period of Thirty (30) days from date of this Decision.

**Dated:** 23<sup>rd</sup> August 2023



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**CHIEF EXECUTIVE**

**Directors:** Sibongile Ndlela-Simelane (Chairperson), Mvilawemphi Dlamini (Chief Executive), Bheki Ndzinisa, Bongive Dlamini, December Mavimbela, John Mathwasa, Reverend Senzo Peter Hlatshwayo.  
**Company Secretary:** Ozzie Thakatha.