



# **RIGHTS AND REMEDIES: COMPLAINTS AND MEDIATION**

**Commissioner of Data Protection**

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## 1. Introduction

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The Dubai International Financial Centre and/or its affiliates and entities (collectively “DIFC”, “DIFCA”) values individuals’ security and privacy. DIFC has its own [Data Protection Law, DIFC Law No. 5 of 2020](#) (the “DP Law”), and may for certain types of Personal Data processing also apply the laws from other jurisdictions.

The defined terms used herein have the same meaning as the defined terms in the DP Law.

If you require further information or clarification about anything provided in this guidance document or any other guidance referenced herein, please contact the DIFC Commissioner of Data Protection (the **Commissioner**) either via the DIFC switchboard, via email at [commissioner@dp.difc.ae](mailto:commissioner@dp.difc.ae) or via regular mail sent to the DIFC main office. Also, you may wish to refer to the [DIFC Online Data Protection Policy](#).

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## 2. Scope

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Due to DIFC's historical reliance on UK and EU data protection and privacy principles and the interpretation thereof by the UK authorities, from a common law perspective, this guidance should be read in conjunction with those existing UK and EU laws and guidance on the same topic, with which the DP Law is also aligned.

*Please note that **this guidance expresses no opinion on lawfulness of specific business activities, does not have the force of law, and is not intended to constitute legal advice.** Please contact legal counsel for assistance in determining your data protection and privacy policies in respect of the issues under discussion to ensure compliance with the applicable laws and regulations. The Commissioner does not make any warranty or assume any legal liability for the accuracy or completeness of the information herein as it may apply to the particular circumstances of an individual or a firm.*

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### 3. Purpose

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In accordance with Article 60 of the DP Law 2020, the DIFC Commissioner of Data Protection may inspect an entity subject to the DP Law 2020, or may investigate or mediate complaints from the public about interferences with people's privacy that contravene the DP Law 2020. While investigating, the Commissioner's Office looks for opportunities to resolve the issues in a way that's acceptable to both sides of the dispute.

Any investigation is impartial and is independent of the DIFC governing bodies in determining whether to investigate or mediate, the outcome, and the recommendations / directions provided (if any).

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### 4. Deciding to investigate or mediate

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When the Commissioner's Office receives a complaint, he will decide whether a full investigation is necessary and will engage all Parties to a full view of the issue.

The Commissioner's Office may decide not to continue to investigate a complaint if:

- the issue isn't covered by the DP Law 2020
- the complaint is about a personal or family dispute, or not covered by the DP Law 2020
- there is a better way of dealing with the matter first that has not been employed
- there is another legally required complaints procedure that needs to be followed first
- the complaint is about a breach of someone else's privacy.

All parties have the chance to comment or raise concerns before discontinuing an investigation.

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## 5. Investigating the complaint and mediation

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If the Commissioner's Office decides to investigate, he will determine which principles of the DP Law 2020 may have been breached and how, and will notify the complainant and the relevant entity.

The Commissioner's Office conducts investigations by talking to the parties in person and by telephone, email, and letter. The Commissioner's Office may ask for a meeting with the relevant entity and the complainant as well to discuss the complaint.

At this time, required documents and information relevant to the complaint may be requested, but no correspondence between the parties will be shared, unless permitted or requested by the relevant parties to do so. The parties need to be able to speak to the Commissioner's Office openly for any investigations to be effective.

The Commissioner's Office close most investigations within four to six months but may occasionally take longer depending on the individual circumstances.

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## 6. Settling the complaint

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The Commissioner's focus is on resolving disputes and where appropriate trying to facilitate the settlement of a complaint with or without investigating it. Most settlements come in the form of apologies, a release of information, or some other similar action, sometimes issued by the Commissioner in the form of recommendations or a direction.

In accordance with Article 64 of the DP Law 2020, a Data Subject may apply to the Court of compensation. Any Controller involved in Processing that infringes the DP Law 2020 shall be liable for the damage caused. A Processor shall be liable for the damage caused by Processing only where it has not complied with obligations of the DP Law 2020 specifically directed to Processors or where it has acted outside or contrary to the lawful instructions of the Controller.

If the Commissioner's Office cannot settle the complaint or decides not to investigate further, it will advise the parties of this view and close our investigation file. On the basis of the investigation or mediation, the Commissioner may issue a direction or make a declaration of contravention or no contravention to the DP Law 2020.

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## 7. Other available remedies

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In accordance with Article 63 of the DP Law 2020, if the complainant disagrees with a finding or direction by the Commissioner of contravention (or of no contravention) of the DP Law 2020, she may appeal against the finding to the DIFC Courts within thirty (30) days.

The DIFC Courts may make any orders that it may think just and appropriate in the circumstances, including remedies for damages or compensation, penalties and imposition of administrative fines and findings of fact or alternative findings of fact in relation to whether or not the Law has been contravened.

A table of rights and remedies available to individuals under DP Law 2020 is available on the [Accountability and Rights](#) page of the [DIFC DP website](#).

An individual who disagrees with a finding by the Commissioner of a contravention of the DP Law 2020 or no contravention of the DP Law 2020 may appeal against the Commissioner's findings to the DIFC Court within thirty days. The DIFC Court may make any order that it thinks just and appropriate in the circumstances including remedies for damages or compensation, penalties and imposition of administrative fines and findings of fact or alternative findings of fact in relation to whether or not the DP Law 2020 has been breached.

The DIFC Courts have exclusive jurisdiction in the interpretation of DIFC laws and regulations, including the DP Law 2020.<sup>1</sup> The rules of the DIFC Courts are available on the DIFC Courts' website.<sup>2</sup>

Additionally, a data subject who suffers material or non-material damage by reason of any contravention of the DP Law 2020 or the corresponding regulations, may apply to the DIFC Court for compensation from the controller or processor in question, in addition to, and exclusive of, any fine imposed on the same controller and/or processor by the Commissioner. If there are more than one controller or processor (or both a controller and processor), each entity shall be held jointly and severally liable for the entire damage in order to ensure effective compensation to the data subject.<sup>3</sup>

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<sup>1</sup> Article 14(e) of the Operating Law and [Judicial Authority Law, Dubai Law No 12 of 2004](#)

<sup>2</sup> Available on [Court Rules \(difccourts.ae\)](#).

<sup>3</sup> Article 64(2) DP Law 2020

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Rules and decision made by the DIFC Courts in a public hearing area available on the DIFC Courts' website.<sup>4</sup> Where proceedings are made through arbitration in accordance with the DIFC Arbitration Law 2008, these may be heard in a closed court proceeding. In this case, the DIFC Courts may not make a direction permitting information to be published unless: (a) all parties agree that the information may be published; or (b) the court is satisfied that the information, if published, would not reveal any matter (including the identity of any a party) that any party reasonably wishes to remain confidential. Additionally, if the DIFC Court gives a judgment in respect of closed court proceedings and it considers the judgment to be of major legal interest, the DIFC Court must direct that reports of the judgment be published in law reports and professional publications.<sup>5</sup>

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## 8. Questions and Comments

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Please contact the DIFC Commissioner of Data Protection either via the DIFC switchboard, via email at [commissioner@dp.difc.ae](mailto:commissioner@dp.difc.ae) or via regular mail sent to the DIFC main office for any clarifications or questions related to this document. You may also wish to refer to the [DIFC Online Data Protection Policy](#).

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<sup>4</sup> See <https://www.difccourts.ae/about/public-hearing>.

<sup>5</sup> See DIFC Court Rules 43.42 and Practice Direction No. 2 of 2013 Confidentiality of Arbitral Proceedings.

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