

DSWD OPINION NO. 31 S. 2024

DRN: LS-L-LO-24-03-50232-C

MEMORANDUM

FOR : **IRENE B. Dumlao, CESO IV**
Assistant Secretary for OSEC Concerns/Data Protection Officer ✓

FROM : **ASSISTANT SECRETARY FOR GASSG, AND CONCURRENT
OFFICER-IN-CHARGE, LEGAL SERVICE**

SUBJECT : **PNP REQUEST FOR INFORMATION ON RECORDS ON MWPR**

DATE : **20 MARCH 2024**

This pertains to your MEMORANDUM¹ requesting for the official position of the Legal Service (LS) on whether it is appropriate for the Department of Social Welfare and Development (DSWD) to share to the Philippine National Police (PNP), data or information available on a "Most Wanted Persons with Rewards (MWPR)" so that your office can provide guidance to the National Household Targeting Office (NHTO) and subsequently provide the Philippine National Police with a response.

In the LETTER², the PNP District Mobile Force Battalion, Southern Police District ("DMFB-SPD") has requested the DSWD Secretary for data or information on the person named "JUDITH CARRABIDO", tagged as one of the MWPR. Their request is based on Section 12 of Republic Act (RA) No. 10173 or the Data Privacy Act (DPA) of 2012 which provides:

"SEC. 12. Criteria for Lawful Processing of Personal Information. – The processing of personal information shall be permitted only if not otherwise prohibited by law, and when at least one of the following conditions exists:

X X X

(e) The processing is necessary in order to respond to national emergency, to comply with the requirements of public order and safety, or to fulfill functions of public authority which necessarily includes the processing of personal data for the fulfillment of its mandate."

We recognize the mandate of the PNP to investigate and prevent crimes, effect the arrest of criminal offenders, bring offenders to justice and assist in their prosecution, among others, under Section 24 of RA No. 6975³.

A reading of the PNP letter, however, shows that the request is based on the claim that the person "JUDITH CARRABIDO" is one of the MWPR, but there was no other data from the PNP whether this person is an employee of DSWD, or a beneficiary of one of the

¹ Attached as ANNEX "A"

² Attached as ANNEX "B"

³ AN ACT ESTABLISHING THE PHILIPPINE NATIONAL POLICE UNDER A REORGANIZED DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT, AND FOR OTHER PURPOSES.

DSWD programs, nor has PNP provided a copy of the arrest warrant from the issuing court and the specifics as to what data the PNP wanted to acquire.

In **Advisory Opinion No. 2021-018 of the National Privacy Commission (NPC)**, the NPC rendered an opinion to a query of a company wherein the PNP is requesting for personal information on the company's employees who have an existing warrant. The NPC stated:

"PNP mandate, powers and function

As general rule, it may be prudent for a personal information controller (PIC) to provide personal information to the PNP after it receives a formal subpoena to ensure that the PNP's request is authorized, proper and lawful under existing laws and regulations. As previously stated, RA No. 10973⁴ requires that the subpoena must state the personal information being requested, the reason for such request, and the relevance of the said request to the investigation being conducted.

In this case, however, although there is no subpoena from the PNP requesting for personal information, there is already an existing warrant against the employees, thus accommodating the PNP's request may be warranted under the DPA.

Nevertheless, the company is not precluded to further ask and/or confirm from the PNP additional details with respect to the validity of the warrant and the standard operating procedure to be followed in case the person to be arrested is not within the premises. The company should likewise keep documentation of such instances of disclosure of personal information in relation to law enforcement activities.

Further, in **NPC Advisory Opinion No. 2021-043**, the NPC likewise rendered an opinion on whether the PNP is required to declare the purpose for requesting the data so that the City Health Office (CHO) can determine if the data requested is proportional, material, and relevant to the purpose, and whether the CHO may, in the exercise of its judgment, refuse to disclose any requested medical/drug rehabilitation records if the purpose of the request is not clear or specific. It was stated thus:

"Adherence to general data privacy principles; legitimate purpose; proportionality; purpose limitation; statistics

Regardless of whether the CHO and the PNP executes a DSA, as personal information controllers (PICs), both must adhere to the general data privacy principles of transparency, legitimate purpose, and proportionality in all personal data processing activities.

⁴ AN ACT GRANTING THE CHIEF OF THE PHILIPPINE NATIONAL POLICE (PNP) AND THE DIRECTOR AND THE DEPUTY DIRECTOR FOR ADMINISTRATION OF THE CRIMINAL INVESTIGATION AND DETECTION GROUP (CIDG) THE AUTHORITY TO ADMINISTER OATH AND TO ISSUE *SUBPOENA* AND *SUBPOENA DUCES TECUM*, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 6975, AS AMENDED, OTHERWISE KNOWN AS THE "DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT ACT OF 1990"

Specifically, for legitimate purpose, this principle requires that the processing shall be limited to and compatible with a declared and specified purpose which must not be contrary to law, morals, or public policy.

In addition, the principle of proportionality requires that the processing shall be adequate, relevant, suitable, necessary, and not excessive in relation to a declared and specified purpose and that personal data shall be processed only if the purpose of the processing could not reasonably be fulfilled by other means.

*Hence, it is incumbent upon the PNP to **declare the specific purpose/s for requesting the data in accordance with Section 11 (a) of the DPA** as appropriately cited by the CHO in its letter to the PNP.*

It bears stressing that the blanket statement of the PNP that “The legitimacy of the use of such data is inherent in the PNP’s function to collaborate with other government agencies to perform its duty. The collaboration and sharing of these data are essential in the government’s anti-illegal drugs campaign without further need for the PNP to justify the legitimacy of its purpose;” does not conform with the requirements of purpose limitation under the DPA.

The PNP should identify the specific provisions of laws, rules, and regulations mandating it to process the personal data of drug surrenderers and communicate the same to the CHO.

That is, while there may be a legal ground for processing of personal data under the DPA, as the Personal Information Controller (PIC) of the Department’s data, the DSWD **will not be able to grant the request** because the Department must also comply with Article III Section 2 of the 1987 Constitution.

No less than the Bill of Rights of the 1987 Constitution establishes the fundamental right of the people to be secure in their papers and documents; it states:

“ARTICLE III

Bill of Rights

X X X

*SECTION 2. **The right of the people to be secure in their persons**, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.”*

The arrival of the Data Privacy Act of 2012⁵ did not repeal the people’s constitutional right to be secure in their papers and documents **unless there is a search warrant**.

⁵ Republic Act No. 10175.

*In an analogous case where the National Bureau of Investigations (NBI) sent a letter to a school requesting for school records, the National Privacy Commission (NPC) stated that allowing a letter-request to substitute for a search warrant would grant NBI limitless power to gather information. **The relevant NPC Advisory Opinion states:***

“The right against unreasonable searches and seizures guards against the exercise of government of unbridled discretion in collecting, obtaining and using information relevant to individuals, for whatever purpose. The request for disclosure of ‘school records’ as in this case, ‘in connection with the investigation being conducted by this Bureau’ is not the same as the issuance of a search warrant. If it were so, then it would be akin to issuing a general search warrant through a mere letter-request, rendering the power of the NBI limitless to gather information, even in those cases where individuals have overriding privacy interests.”

In the absence of a search warrant, the PNP’s investigation cannot be allowed to an extent that it is already “overriding privacy interests.”

To emphasize the need for full respect for privacy, the NPC further stressed:

“The DPA should always be interpreted in a manner consistent with the full respect for human rights enshrined in the Constitution.”

While we may grant the request of the PNP, as it aligns with their statutorily mandated function, and the subject person already has a warrant, it is crucial to adhere to the guidelines for processing and sharing information. This is particularly important because we have established procedures for data sharing outlined in DSWD Administrative Order (AO) No. 19, series of 2021, with the subject Internal Guidelines on the Sharing of Data Generated from Listahanan. This adherence is in accordance with Section 4 (e) of the DPA, which specifies that the processing of information necessary for the functions of a public authority, in line with constitutionally or statutorily mandated functions related to law enforcement, is a special case subject to restrictions provided by law.

Additionally, the company should follow these key points in relation to the mentioned provision:

- a) The information is necessary in order to carry out the law enforcement functions. Where the processing activity violates the Constitution, or any other applicable law, the processing will not be considered necessary for law enforcement purposes;*
- b) The processing is for the fulfillment of a constitutional or statutory mandate; and*
- c) There is strict adherence to all due process requirements. Where there is a nonconformity with such processes, such processing shall not be deemed to be for a special case⁶.***

The DSWD as personal information controller has data sharing procedures that the PNP must comply in requesting for data or information, such as provided under AO No. 19, series of 2021, Item 8 (8.1) which states among others the requirements for request

⁶ Privacy Policy Office Advisory Opinion No. 2021-018

involving personal or sensitive information that the letter of request should be duly signed by their Head of Office and addressed to the National Household Targeting Office (NHTO) Director indicating purpose for the request, and the list of data sets required and how this will be used, and a reasonable timeline as to when the requested data is needed. Without this strict adherence and nonconformity with this processes, the processing of the information will not be considered to be a special case even if it is considered necessary for law enforcement purposes.


Recommendations

Guided by the Law, NPC Opinions, and the DPA, the LS recommends that the Office of the Assistant Secretary for OSEC Concerns/Data Protection Officer should propose to the NHTO and eventually to the DMFB-SPD **to ask for the particulars and specifics as to what data or information they will need and to further ask and confirm additional details with respect to the validity of the warrant and standard operating procedures to be followed.** Likewise, the DSWD should keep documentation of such instances of disclosure of personal information in relation to law enforcement activities.

For consideration.

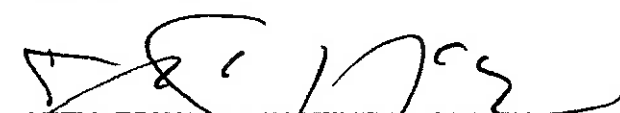
Kindly fill out the attached Customer Feedback Form and return the same to the Legal Service.

Thank you.



ATTY. GINA V. WENCESLAO
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Approved by:



ATTY. EDWARD JUSTINE R. ORDEN
Undersecretary for GASSG/LS