

**DSWD OPINION NO. 32 S. 2024**

DRN: LS-L-LO-24-03-54659-C

**MEMORANDUM**

**FOR : EDMON B. MONTEVERDE**  
Director IV, Program Management Bureau

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

**SUBJECT : REQUEST FOR LEGAL OPINION ON THE PNP REQUEST**  
**INVOLVING RYAN PASCUAL Y PALOMARES**

**DATE : 25 MARCH 2024**

This pertains to your MEMORANDUM<sup>1</sup> endorsing the letter<sup>2</sup> from the Philippine National Police (PNP), Muntinlupa City Police Station, Station Intelligence Section (MCPS-SIS) addressed to the Office of the Secretary dated 02 February 2024 requesting for any record of social welfare assistance given to "RYAN PASCUAL Y PALOMARES", or if he has been a recipient of any of the Department's programs and services. Further, you also requested for advice on whether there would be a need to access other sources of data in the Department to check if the above-mentioned person has been a recipient of any programs and services considering that per your records Ryan Pascual Y Palomares is not found in the program database for Social Pension, Centenarian, and Assistance to Individuals on Crisis Situation (AICS).

**Comment:**

The endorsed PNP letter shows that the request is based on a claim that there is a continuous manhunt operation for a certain "RYAN PASCUAL Y PALOMARES" who is included in the Department of Interior and Local Government (DILG)'s Most Wanted Person with Criminal Case No. 05-913 for the crime of Robbery with Homicide. There was no other information furnished by the PNP as to whether the subject individual is an employee of the DSWD or a beneficiary to any particular program. In addition, no copy of the arrest warrant against the subject individual from the issuing court was attached. The PNP also failed to provide what particular data is sought and the purpose/s of the data to be obtained.

Section 24 of the *Department of the Interior and Local Government Act of 1990*<sup>3</sup> provided for the powers and functions of the PNP such as, among others, the power to investigate crimes, effect the arrest of criminal offenders, bring offenders to justice, and assist in their prosecution.

<sup>1</sup> Annex "A"

<sup>2</sup> Annex "B"

<sup>3</sup> Republic Act No. 6975

The *Data Privacy Act of 2012*<sup>4</sup> (DPA) and its Implementing Rules and Regulations (IRR) aims to protect the fundamental human right of privacy and that personal information of individuals in information and communications systems in the government and in the private sector are secured and protected. The processing of personal and sensitive information, which includes disclosure, is prohibited as a general rule, however, Sections 12 and 13 of the DPA provides for the exceptions where disclosure may be permitted. In addition, the processing of information by law enforcement agencies, such as the PNP, may also be allowed under special cases enunciated in Section 4 (e) of the DPA.

The National Privacy Commission (NPC), pursuant to a request for advisory opinion<sup>5</sup> on the request for personal data by the National Bureau of Investigation (NBI) and the Philippine Army, laid down instances when Sections 12 and 13 of the DPA may be applied when government agencies requests for the disclosure of personal and sensitive information, thus:

“The law provides for the various criteria for lawful processing. For personal information, this may be disclosed pursuant to the applicable provisions of Section 12, particularly Section 12 (c) where the processing is necessary for compliance with a legal obligation, or Section 12 (e) where 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.

For sensitive personal information, release or disclosure is generally prohibited unless it is permitted under Section 13 of the DPA. For the given scenario, Section 13 (b) recognizes the processing that is provided for by existing laws and regulations, while Section 13 (f) provides for the processing for the establishment, exercise or defense of legal claims, or when provided to government or public authority.”

In the same above-mentioned advisory opinion, the NPC emphasized:

“... while the DPA shall not be used to hamper, or interfere with, the performance of the duties and functions of duly constituted public authorities, government agencies do not have the blanket authority to access or use the personal data of individuals under the custody of another agency. Government agencies as personal information controllers, must be able to show that their personal data processing activities are necessary to their statutory functions, and that the processing is limited to achieving such specific purpose, function, or activity based on mandate.”

Government Agencies may validly request for the disclosure of personal and sensitive information of individuals in pursuant to its government mandate, however, the same is conditioned that the request adheres to the applicable provisions of law, rules and regulations, and the general data privacy principles under the DPA.

<sup>4</sup> Republic Act No. 10173

<sup>5</sup> NPC Advisory Opinion No. 2020-051

In its **Advisory Opinion No. 2021-018**, the NPC rendered an opinion to a query of a company as to the PNP's request of personal information on the company's employees who have an existing warrant, to wit:

**"Hence, as a 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. 10973 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 arrest 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."** (emphasis supplied)

Further, the NPC, in response to a request for an advisory opinion on whether the personal and sensitive personal information of drug surrenders undergoing drug rehabilitation may be shared by the Iloilo City Health Office (CHO) with the PNP, stated that PNP as a Personal Information Controller (PIC) is still subject to the other requirements under the DPA, its IRR, and issuances of the NPC, stated:

**"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.**

**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.”** (emphasis provided)

It must also be noted that the Department has the duty to ensure that the rights against unreasonable searches and seizures of its beneficiaries and recipients are protected pursuant to Section 2, Article III of the 1987 Constitution:

“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.”

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<sup>6</sup> states:

The phrase, “necessary for law enforcement purposes” is not a weapon that can be indiscriminately wielded by any agency that invokes it. The law enforcement agency must establish its mandate to enforce a particular law, and more importantly, that they are not unreasonably infringing on the rights of individuals guaranteed by the Constitution. Failure to establish both grounds renders the processing unnecessary and contrary to law.

Section 2, Article III of the 1987 Philippine Constitution declares the inviolability of 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, where a search warrant or warrant of arrest can only be issued upon finding of probable cause and by a court of competent jurisdiction. This provision has at its core the recognition of the right to privacy of individuals, and the guarantee that any limitations on this right is subject to the strictest scrutiny.

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**

<sup>6</sup> NPC Advisory Opinion No. 2018-071

**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.”

The NPC further reiterated in the above-mentioned opinion:

“The NBI is not prohibited from making this request but neither is the school or institution obligated to disclose such information based only on the letter-request of NBI. The DPA should not be used to legitimize acts or omissions that violate fundamental freedoms. The DPA should always be interpreted in a manner consistent with the full respect for human rights enshrined in the Constitution.”

Disclosure by the DSWD of personal and sensitive information may be allowed under the DPA, however, the same should be done in a secure manner and with strict adherence to all existing protocols and standard operating procedures, such as compliance with the requirement of subpoenas and/or search warrants by the PNP relevant to the information sought.

Additionally, the Department must adhere to following guidelines when the personal information sought by the PNP, pursuant to its statutory mandate as provided under Section 4(e) of the DPA, to the minimum extent of collection, access, use, disclosure, or other processing necessary to the purpose, function, or activity concerned:

- 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 case.<sup>7</sup>

It must be noted that the DSWD has relevant issuances as to sharing of procedures that third-parties must comply with when requesting for data and information. The PNP must adhere and conform to these processes, in addition to those provided by the DPA, its IRR, and general data principles, so that the processing of information may be permitted.

## Recommendations

Guided by the Law, NPC Opinions, and the DPA, the LS recommends that the PNP MCPS-SIS personal information controller (PIC) be informed that it need to submit additional details such as a formal subpoena from the court stating the personal information being requested, the reason for such request, and the relevance of said request to the investigation being conducted, validity of the warrant and standard operating procedures to be followed.


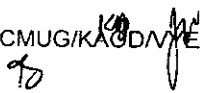
<sup>7</sup> NPC Advisory Opinion No. 2021-08

As to the inquiry on whether there is a need to access the Department's other sources of data, it is our opinion that in view of the insufficiency of information presented by the PNP, there same may be deferred pending the submission by the PNP of the request bearing the needed details as abovementioned.

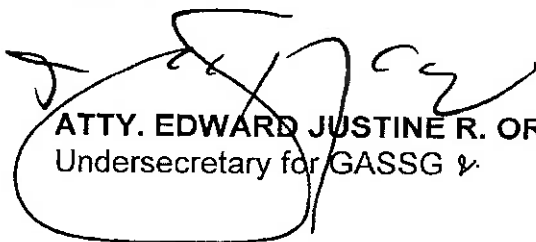
For consideration.

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

Thank you.

  
**ATTY. GINA V. WENCESLAO**  
0328 24  
CMUG/KAC/DV/E/10065  


Approved by:

  
**ATTY. EDWARD JUSTINE R. ORDEN**  
Undersecretary for GASSG &