

MEMORANDUM

FOR : ATTY. MEGAN THERESE Y. MANAHAN
Director IV, Standards Bureau

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

SUBJECT : LEGAL OPINION ON THE CONCERNS OF PHILIPPINE BUSINESS
FOR SOCIAL PROGRESS (PBSP) INC.

DATE : 18 JUNE 2024

This is in reference to your Memorandum requesting for a legal opinion on the concern of Philippine Business for Social Progress Inc. (PBSP) in the renewal of their Certificate of Registration and License to Operate (CRLTO).

In your memorandum, the processing for the renewal of PBSP's application was placed on hold due to the non-disclosure of their employees' salary in the Profile of Employee Form which is a requirement for the said application. According to PBSP, "the data subject concerned with the disclosure of salaries being required is not PBSP, but the employees of PBSP themselves. Any and all salary within PBSP is personal information protected under the Data Privacy Act (DPA) of 2012¹ and the sharing of such information with third parties must have the consent of PBSP employees".

PBSP also mentioned that there is nowhere in the DSWD Memorandum Circular (MC) No. 17, series of 2018² and its annexes that expressly require the disclosure of employee salary information or to prove compliance with the existing salary standards as one of the requirements for the renewal of PBSP license to operate. Hence, they assert that absent any clear and express rule, regulation, or mandate regarding the submission of salary information as a requisite to secure license to operate, there is no reason for DSWD to require its submission or be made an obstacle to the renewal of PBSP license to operate.

In this regard, please consider our comments below:

The Department of Social Welfare and Development (DSWD) is mandated to set standards and provide consultative services to organizations engage in social welfare and development activities. In line with this, the DSWD, through the Standards Bureau (SB) conducts the registration and licensing of agencies and organizations engaged or planning to engage in social welfare and development programs and services.

Section 23 of Republic Act (RA) No. 4373³, as amended by RA No. 10847⁴, provides:

¹ REPUBLIC ACT NO. 10173, An Act Protecting Individual Personal Information in Information and Communications Systems in the Government and the Private Sector, Creating for this Purpose a National Privacy Commission, and for Other Purposes

² Revised Guidelines Governing the Registration, Licensing of Social Welfare and Development (SWD) Agencies and Accreditation of SWD Programs and Services

³ An Act to Regulate the Practice of Social Work and the Operation of Social Work Agencies in the Philippines and for Other Purposes

⁴ An Act Lowering the Age Requirement for Applicants Taking the Board Examination for Social Workers, Providing for Continuing Social Work Education, and Upgrading the Sundry Provisions Relative to the Practice of Social Work

“SEC. 23. *Registration with the Department of Social Welfare and Development.* – No social welfare and development agency, as defined herein, shall operate and be accredited as such unless it shall first have registered and secured a license with the Department of Social Welfare and Development which shall then issue the corresponding registration certificate and license to operate. Provided. That existing social welfare and development agencies at the time of approval of this Act shall have a period of one (1) year within which to secure the corresponding certificate of registration and license to operate. (emphasis supplied)

Before any social welfare and development agency shall be duly registered and licensed, the following requirements must be duly complied with to the satisfaction of the Department of Social Welfare and Development: (emphasis supplied)

- (1) That the applicant must be engaged mainly or generally in social welfare and development activities;
- (2) That the applicant has employed a sufficient number of duly qualified staff and/or registered social workers to supervise and take charge of its social welfare and development activities in accordance with the set standards;
- (3) That the applicant must show in a duly certified financial statement that at least seventy percent (70%) of its funds are disbursed for direct social work services; and
- (4) That the applicant keeps a record of all social development and/or welfare activities handled by it.”

Executive Order No. 221, series of 2003, also provides the role, powers and functions of the DSWD in relation to Social Welfare and Development Agencies (SWDAs), to wit:

SEC. 2. Roles of the DSWD.

xxx

- d) Licensor and accreditor of social welfare development agencies and service providers;

SEC. 3. Powers and Functions of the DSWD.

- a) Set standards, accredit and provide consultative services to public and private institutions, organizations and persons engaged in social welfare activities, and monitor performance and compliance to standards by institutions, organizations and persons engaged in social welfare activities, both public and private;

x x x

In order to fulfill the foregoing regulatory functions of DSWD over SWDAs, Section 12 (e) of the DPA and Section 21 (f) of its Implementing Rules and Regulations (IRR) allow the processing of personal data subject to compliance with the law and strict adherence to the principles of transparency, legitimate purpose, and proportionality, to wit:

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 condition 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:

x x x

In the same vein, Section 13(b) of the DPA also allows for the processing of sensitive personal information, even without the consent of the data subjects, viz:

“SEC. 13. Sensitive Personal Information and Privileged Information. – The processing of sensitive personal information and privileged information shall be prohibited, except in the following cases:

x x x

(b) The processing of the same is provided for by existing laws and regulations: Provided, that such regulatory enactments guarantee the protection of the sensitive personal information and the privileged information. Provided further, That the consent of the data subjects are not required by law or regulation permitting the processing of the sensitive personal information or the privileged information;

x x x

Thus, it is our considered view that DSWD is allowed to process personal information as well as sensitive personal information and privileged information when it is necessary to carry out its functions as mandated by law, that is, to set standards, accredit, provide consultative services, and issue corresponding registration certificate and license to operate to SWDAs.

This was further explained by the National Privacy Commission (NPC) in its Advisory Opinion No. 2021-024⁵ which states:

“Disclosure of personal data related to juridical entities; fulfillment of mandate of public authority

x x x

In relation to the above, where disclosure of personal and/or sensitive personal information (collectively, personal data) of individuals connected to the SWDA, SP, or CSO is involved, the DPA will apply.

Under the DPA, Section 12 (e) provides that the processing of personal information shall be permitted when it is necessary to fulfill the functions of a public authority which includes the processing of personal data for the fulfillment of its mandate. If sensitive personal information is involved, processing may be based on Section 13 (b) which recognizes processing that is provided for by existing laws and regulations.

The DSWD may process any personal data of individuals, who may be directors, officers, employees or members of SWDAs, SPs, and CSOs which may include their names, contact information, business addresses, when such processing is necessary to fulfill its functions in the registration, licensing and

⁵ Privacy Policy Office Advisory Opinion No. 2021- 24R2 PUBLIC DISCLOSURE OF INFORMATION ON SOCIAL WELFARE AND DEVELOPMENT AGENCIES, SERVICE PROVIDERS, AND CIVIL SOCIETY ORGANIZATIONS

accreditation of said entities, including monitoring and oversight functions.
(emphasis supplied)

x x x

On the other hand, PBSP claims that the employee salary information is not indicated in DSWD MC No.17, series of 2018 and its annexes. It should be noted that DSWD MC No.17, series of 2018 has been amended by DSWD MC No. 21, series of 2022⁶ which included the information for the monthly salary of the employees as indicated in Annex 22 - DSWD RLA-F021 Profile of Employees⁷ (FORM). The said form is an integral part of the DSWD Policy, therefore, must be sufficiently complied with by the SWDAs.

For these reasons, the Legal Service respectfully submits that the information with regard to the salary of the employees of PBSP may be required by the DSWD in the performance of its regulatory functions over SWDAs which includes the renewal or non-renewal of their CRLTO.

Please be informed that the foregoing legal opinion, is based solely on the information provided by your office, and may vary based on additional information or document/s or when the facts are changed or elaborated.

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

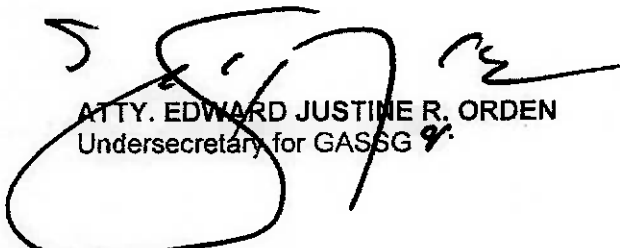
Thank you.



ATTY. GIMA V. WENCESLAO

MCMUG/AVVYE/10065

Approved by:



ATTY. EDWARD JUSTINE R. ORDEN
Undersecretary for GASGG

⁶ Amendment of Memorandum Circular No. 17, series of 2018 Entitled Revised Guidelines Governing the Registration, Licensing of Social Welfare and Development (SWD) Agencies and Accreditation of SWD's Programs and Services" - Clauses VII, XI, and Requirements Annex A (Annex 22 Profile of Employees)