

DSWD OPINION NO. 68 S. 2024

DRN: LS-L-LO-24-08-53392-C

MEMORANDUM

TO : JENNIFER M. RIZO
Director IV, Human Resource Management and Development Service

FROM : THE ASSISTANT SECRETARY FOR GENERAL ADMINISTRATION AND SUPPORT SERVICES GROUP AND CONCURRENT OFFICER-IN-CHARGE, LEGAL SERVICE

SUBJECT : GUIDANCE ON THE INCLUSION OF A PROVISION ON ADHERENCE TO DSWD DATA PROTECTION POLICIES IN THE MOA OF THE COS WORKERS FOR THE SUCCEEDING CONTRACTING PERIOD

DATE : 10 SEPTEMBER 2024

This has reference to your Memorandum¹ requesting for guidance on the inclusion of a provision in the Memorandum of Agreement (MOA) of the Contract of Service (COS) workers expressly manifesting their adherence to the Department's data protection policies.

Per your Memorandum, it is the Data Protection Officer (DPO), through the recommendation of the Office of the Secretary, which recommended the inclusion of the said provision on adherence to data protection policies, along with a specific stipulation which provides that an unnecessary disclosure or improper disposal of confidential information obtained in the course of or by reason of employment shall be considered as a ground for the termination of the MOA of said COS worker, without prejudice to any charges or cases that may be filed against him or her.

On 16 August 2024, this level sought for a clarification as the subject matter is different from the content /concern stated in the Memorandum.

After a discussion with Mr. Paul Brian L. Perez of the HRMDS, the following was clarified:

1. The subject appearing on HRMDS' Memorandum request to LS dated 29 July 2024 "Issuance of Special Order to Designated Signatory for the Execution of the Non-Disclosure and Confidentiality Agreement in the Implementation of the Integrated Grievance Redress Management System" was merely copied from the Subject portion of the Memorandum received from the OSEC to the DPO, as visibly seen in the attached Routing and Tracking Slip². Nonetheless, the guidance sought, as reflected from the body of the Memorandum, is on the inclusion of applicable provisions in the MOA of the COS workers;

¹ Annex A – Memorandum from HRMDS dated 29 July 2024

² Annex C – RTS from the Office of the Secretary to the DPO under DRN AOS-A-COMM-24-07-20595-S

2. That the provision cited from M.C. No. 21, series of 2012 was incompletely cited from "section IV.a" to "section IV (4.a)"

After a careful review of the matter submitted before us, we respectfully submit the comments below.

It is a well-established rule that "the freedom of contract is both a constitutional and statutory right"³, and "the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy"⁴. Further, obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. Therefore, the inclusion of a provision in adherence to the Department's data protection policies is within the parties' freedom to contract, thus, valid.


This is also in compliance with DSWD Memorandum Circular (MC) No. 21, series of 2012, or the "Enhanced Guidelines on the on the Code of Conduct for Personnel" provides that "DSWD Personnel shall not disclose any confidential information in the course of or by reason of their employment"⁵. Relevantly, the existing MOA⁶ template for COS Workers utilized by the Human Resource Management and Development Service (HRMDS) provides that the Contractor shall abide to the DSWD Code of Conduct.

Furthermore, we concur with the recommendation of the DPO to expressly stipulate in the MOA the applicable provisions on adherence to data protection policies and inclusion of the unnecessary disclosure of such information obtained through the course of work as ground for the termination of the MOA of the said COS worker, without prejudice to any charges or cases that may be filed against him or her. We opine that such stipulation not only sets a clear and express intention of the Department to protect its integrity, but also adds emphasis on the same.

Lastly, 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.

For your consideration.

Thank you.


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³ Rivera v. Solidbank Corporation, 521 Phil. 628, 651 (2006)

⁴ Art. 1306, New Civil Code

⁵ Section IV. 4.a of M.C. No. 2012-021

⁶ Annex B – MOA template for COS Workers