

Forget Me Not

Balancing the Right to Know and the Right to Forget

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In this talk

Overview of the Data Privacy Act

- Scope and Limitations

The Right to be Forgotten

- The ECJ Ruling
- Under GDPR's Right to Erasure
- Philippines

Balancing Criticism

- Freedom of Information/
Good Governance
- Free Speech/Press
- Fundamental Right to Privacy



Overview

Scope and Limitations of the Data Privacy Act of 2012

Philippine law on data privacy

The Data Privacy Act

- Republic Act No. 10173
 - Defines NPC
 - Sets forth rights of data subjects and obligations of controllers and processors
- Implementing Rules and Regulations

Case Law

- GDPR Board
- Data Privacy Authorities



Data privacy principles

General Principles

- The law applies to all who process data of Filipino citizens or those who process data in the Philippines.
- Processing personal data is not a right.
- Non-applicability is proven by the party asserting the exemption.
- In case of doubt, the law is interpreted in favor of the data subject.



Exceptions to jurisdiction

Public Authority

- Necessary to carry out the functions of public authority
- Necessary for banks to carry out obligations under CISA and AMLA regulations

Foreign Long-Arm

- Collected from residents of foreign jurisdictions in accordance with laws of that foreign jurisdiction



Freedom of Information

Public officer exception

- Fact of employment
- Title, address, and contact information
- Classification, salary range, and responsibilities
- Official documents made while employed as such

Contractual employment

- Performing service for government institution
- Services performed
- Terms of the contract
- Name given in the course of the performance

Discretionary benefits

- Granting of license or permit to an individual
- Name of the individual
- Nature of the benefit

Academic and press freedom

General Principles

- Must be processed for journalistic, artistic, literary or research purposes.
- Subject to established limits on freedom of press and expression.
- Processing should not compromise privacy and security of personal data.



Right to be Forgotten

Application and Interpretation

The *Costeja* ruling

Facts of the Case

- In 1998, a Spanish newspaper published foreclosure announcements in its print edition relating to social security debts
- In 2010, a man identified in the announcement said Google returned the announcement as his top hit
- He demanded the newspaper and Google (with Google Spain) remove links to the negative data



The *Costeja* ruling



Judgment (RA)

- Newspaper not liable, but Google must remove links

Judgment (ECJ)

- Information that is inadequate, irrelevant, or excessive may be removed from search engines
- Right is not absolute, will always be balanced against other fundamental rights
- Case-by-case assessment necessary

Under the GDPR

Article 17.2

- Provides conditions for the right of erasure provided for in the Data Protection Directive:
 - Data is no longer necessary
 - Data subject withdraws consent
 - Data subject objects to the processing
 - Processing does not comply with the GDPR



Under the GDPR

Article 17.3

- Exceptions:
 - Freedom of expression
 - Public health
 - Historical, scientific, or research purposes
 - Compliance with a legal obligation
 - Cases where processing is restricted



Under the GDPR

Article 17.4

- Processor shall restrict processing when:
 - Data subject contests accuracy
 - Controller no longer needs data for main purpose but needs to maintain data for proof
 - Processing is unlawful but data subject opposes erasure
 - Data subject requests transmittal to another automated processing system.



Philippine context

Legal Provisions

- Section 16 (e), Data Privacy Act of 2012. Right to dispute the inaccuracy or error.
- Implementing Rules and Regulations of the Data Privacy Act, Rule VIII, Sec. 34 (e). Right to rectification, erasure or blocking



Philippine context

Data Privacy Act

Section 16. Rights of data subjects. –

(e) Suspend, withdraw or order the blocking, removal or destruction of his or her personal information from the personal information **controller's filing system** upon discovery and substantial proof that the personal information are incomplete, outdated, false, unlawfully obtained, used for unauthorized purposes or are no longer necessary for the purposes for which they were collected.



Philippine context

Implementing Rules

Subject to certain conditions, the data subject has the right to:

- Suspend
- Withdraw
- Order the blocking or
- Order the removal of personal data

The personal information controller may notify third parties who previously received such processed personal information.



Conditions for removal or blocking

Right to Accurate Information

- The data is incomplete, outdated, false, or unlawfully obtained
- The personal data is being used for an unauthorized purpose
- The personal data is no longer necessary for the purpose for which it was collected
- The processing is unlawful
- Data subjects rights were violated



Conditions for removal or blocking

Right to be Forgotten

- The consent is withdrawn or there is an objection to the processing, and *there is no other legal ground or overriding legitimate interest.*
- The data is prejudicial to the data subject, *unless justified by freedom of speech, expression, or of the press, or otherwise authorized*



Balancing Interests

Under the Data Privacy Act of 2012

Freedom of Information

Public officer exception

- Fact of employment
- Title, address, and contact information
- Classification, salary range, and responsibilities
- Official documents made while employed as such

Contractual employment

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The public figure exception

Ayer Productions v. Capulong, 180 SCRA 861 (1988)

- The right of privacy cannot be invoked to resist publication and dissemination of matters of public interest. *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977).
- Public figures have lost their right to privacy. *Prosser and Keeton on Torts (5th ed)* 859-861.



The public figure exception

The public figure

A public figure has been defined as a person who, by his accomplishments, fame, or mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs, and his character, has become a 'public personage.' He is, in other words, a celebrity. *Prosser and Keeton on Torts (5th ed) 859-861.*



Other statutory exceptions

Section 44, Anti-Violence Against Women and their Children Act (Republic Act No. 9262)

- Publishing name, address, telephone, school, business address, employer, or other identifying information, without consent of the victim is liable for contempt



Other case law exceptions

People v. Cabalquinto, 502 SCRA 419 (2006)

- In this case, and henceforth, Court shall withhold the real name of the victim-survivor and shall use fictitious initials to represent her.
- Later extended to all cases in the Supreme Court website and in online jurisprudence data banks.



In application

The Philippine Experience

In application: a case study

Application of *Cabalquinto*

- Complainant requested retroactive application of the ruling to the report on her case.
- No prior attempt to contact Court Administrator and private court reporters.
- Assistance provided in reaching out to Supreme Court and affected reporters.
- Case record redacted but only for web-only access.



In application: a case study

For future controllers and processors

- Complainants may request directly from processors or controllers (including web search engines)
- Failure to comply gives right to file a complaint before the National Privacy Commission





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