



Republic of the Philippines  
NATIONAL PRIVACY COMMISSION

NPC Circular 22- \_\_\_\_\_

Date :

Subject : **GUIDELINES ON ADMINISTRATIVE FINES**

**WHEREAS**, it is the policy of the State to protect the fundamental human right of privacy of communication while ensuring free flow of information to promote innovation and growth;

**WHEREAS**, the National Privacy Commission (Commission) was created under Republic Act No. (R.A.) 10173, otherwise known as the “Data Privacy Act of 2012” (DPA), in order to discharge the duty of the State to protect individual personal information in information and communications systems in the government and the private sector;

**WHEREAS**, the Commission has the express mandate under R.A. 10173 and its Implementing Rules and Regulations (IRR) to (1) ensure compliance with the provisions of R.A. 10173; (2) receive complaints, institute investigations, and adjudicate on matters affecting any personal information; (3) compel any entity, government agency or instrumentality to abide by its orders or take action on a matter affecting data privacy; and (4) generally perform such acts as may be necessary to facilitate cross-border enforcement of data privacy protection;

**WHEREAS**, the Commission shall perform all acts as may be necessary to implement the DPA, its Implementing Rules and Regulations and the Commission’s other issuances, and to enforce its Orders, Resolutions or Decisions, including the imposition of administrative sanctions, fines, or penalties.

**WHEREAS**, the Commission encourages Personal Information Controllers (PICs) and Personal Information Processors (PIPs) to promote organizational accountability by initiating measures to enhance its compliance with the DPA to protect the rights of its data subjects.

**WHEREAS**, the Commission recognizes that it is necessary for the public interest to impose administrative fines that are proportionate and dissuasive for the effective exercise of its mandate.

**WHEREFORE**, in consideration of these premises, the Commission hereby issues this Circular fixing the amount of administrative fines to be imposed for violations of R.A. No. 10173, its IRR, and other issuances and orders of the Commission.

**Section 1. Scope** - This Circular is applicable to PICs and PIPs as defined in the Data Privacy Act of 2012.

**Section 2. Administrative Fines.** – Any PIC or PIP who shall violate the following provisions of R.A. 10173, its Implementing Rules and Regulations, issuances and orders of the Commission shall be liable for an administrative fine for each violation. The amount of the fine for each infraction shall fall within the ranges identified below, and determined in accordance with the factors enumerated in Section 3 hereunder. In any case, whether single or multiple violations arising from a single act of a PIC or PIP, the total imposable fine shall not exceed Five Million Pesos (Php 5,000,000.00)

#### **GRAVE VIOLATIONS**

Any natural or juridical person processing personal data that infringes on the following provisions and implementing issuances by the Commission shall be subject to administrative fines of 0.5 % to 3 % of the annual gross income of the immediately preceding year of the violation:

- a. For each violation of any of the general privacy principles in the processing of personal data, pursuant to Section 11 of the DPA, where the total number of affected data subject exceeds one thousand (1,000);
- b. For each violation of any of the data subject rights pursuant to Section 16 of the DPA, where the total number of affected data subject exceeds one thousand (1,000);
- c. Any repetition of the same infraction penalized repetition, penalized under this Circular, regardless of the classification as Major or Other Violations, shall be automatically considered as a Grave Violation.

#### **MAJOR VIOLATIONS**

Any natural or juridical person processing personal data that infringes on the following provisions and implementing issuances by the Commission shall be subject to administrative fines of 0.25% to 2% of the annual gross income of the immediately preceding year of the violation:

- a. For each violation of any of the general privacy principles in the processing of personal data, pursuant to Section 11 of the DPA, where the total number of affected data subject does not exceed one thousand (1,000);
- b. For each violation of any of the data subject rights pursuant to Section 16 of the DPA, where the total number of affected data subjects does not exceed one thousand (1,000);
- c. Any failure by a personal information controller to implement reasonable and appropriate measures to protect the security of personal information, pursuant to Section 20 (a) (b) (c) (e) of the DPA;

- d. Any failure by a personal information controller to ensure that third parties processing personal information on their behalf shall implement security measures, pursuant to Section 20 (c)(d) of the DPA; and
- e. Any failure by a personal information controller to notify the Commission and affected data subjects of personal data breaches pursuant to Section 20 (f) of the DPA, unless otherwise punishable by Section 30 of the DPA.

#### **OTHER VIOLATIONS**

- a. Any natural or juridical person processing personal data that commits the omissions provided hereunder-shall be subject to Fine of **not less than Fifty Thousand Pesos (Php 50,000) but not exceeding Two Hundred Thousand Pesos (Php 200,000)**.

The failure to register true and updated information with the Commission the identity and contact details of the PIC, the data processing system, and information on automated decision making, pursuant to Sections 7(a), Section 16, and 24 of the DPA and its corresponding implementing issuances;

- b. Any natural or juridical person processing personal data that that commits the omissions provided hereunder, shall be subject to Fine **not exceeding Fifty Thousand Pesos (Php 50,000)**:

Failure to comply with any Order of the Commission, or of any of its duly-authorized officers, pursuant to Section 7 of the DPA and its corresponding implementing issuances. The fine to be imposed as a result of this infraction shall be in addition to the fine-imposed for the original infraction/s subject of the Order of the Commission;

(e.g. if the Order pertains to the implementation of security measures, a maximum of Php 50,000 shall be added to the fine for that infraction.)

This Circular shall also apply to infractions to be provided in future issuances of the Commission. In those instances, the range of applicable fines shall be set out in such issuance.

**Section 3. Factors Affecting Fines.** The Commission shall consider the following factors in determining the amount of the fine within the range provided in Section 2:

- a. Whether the violation occurred due to negligence, or through intentional violation, on the part of the PIC or PIP;
- b. Whether or not the violation resulted in damage to the data subject; the degree of damage, if any, to the data subject;
- c. The nature and/or duration of the infraction, in relation to the nature, scope, and purpose of the processing;
- d. Action or measure taken prior to the violation to protect the personal data being processed as well as the rights of the data subject under Section 16 of the DPA

- e. Any previous infractions determined by the Commission as contained in its orders, resolutions or decisions, whether or not these infractions had led to the imposition of fines, and the length of time that has passed since those infractions;
- f. Categories of personal data affected;
- g. The manner in which the PIC or PIP discovered the infraction, and whether it informed the Commission;
- h. Any mitigating action adopted by the PIC or PIP to reduce the harm to the data subject; and
- i. Any other aggravating or mitigating circumstances as appreciated by the Commission, including financial benefits or losses avoided by PIC or PIP.

For the purpose of ascertaining the annual gross income of the PIC or PIP, the Commission may evaluate and require the submission of the PIC's or PIP's audited financial statements filed with the appropriate tax authorities for the immediately preceding year of the violation, the last regularly prepared balance sheet or annual statement of income and expenses, and such other financial documents as may be deemed relevant and appropriate.

In cases where a PIC or PIP has not been operating for more than one year, then the base for computing administrative fines shall be its total gross income at the time the violation was committed.

**Section 4. *Due Process.*** – The administrative fine shall be imposed only after notice and hearing are afforded to the PICs and PIPs.

In case the PIC or PIP fails to appear or submit its comment or ~~equivalent~~ pleading, as the case may be, despite due notice, the Commission shall decide on the alleged infraction based on the evidence on record.

If the complaint alleges a violation of the DPA which incurs criminal liability, but the facts proven only constitute one or some of the infractions subject to administrative fines, the PIC or PIP shall be fined for the infraction proven provided it is included in the violation alleged.

A violation charged includes the infraction proven when some of the essential elements of the former, as alleged in the complaint, constitute the latter.

**Section 5. *Effect of Appeal.*** – An appeal shall not stay the immediate enforcement and imposition of the administrative fine unless otherwise restrained by the Court of Appeals or the Supreme Court.

**Section 6. *Refusal to Comply*** – In case of refusal to pay the adjudged administrative fine under this Circular, the PIC or PIP may be subject to, among others, a cease and desist order, and other processes or reliefs as the Commission may be authorized to initiate pursuant to Section 7 of the DPA, and/or appropriate contempt proceedings under the Rules of Court.

Notwithstanding the provisions of Circular 20-02 or the Rules on the Issuance of Cease-and-Desist Orders (CDO), the failure to comply with the Order of the Commission may, after notice and hearing, result in the issuance of a CDO.

**Section 7. *Periodic Review/Modification.*** This Circular may be modified, amended, supplemented, or repealed as may be deemed necessary and proper by the Commission.

**Section 8. *Separability Clause.*** In the event that any provision in this Circular be declared invalid or unconstitutional, the remaining provisions shall remain effective and in full force and effect.

**Section 9. *Applicability Clause.*** These rules apply to covered PICs and PIPs for the above infractions prospectively. All issuances inconsistent with the provisions of this Circular shall be deemed repealed, amended or modified accordingly.

**Section 10. *Effectivity.*** - This Circular shall take effect fifteen (15) days following its publication in newspaper of general circulation.

Approved:

**ATTY. JOHN HENRY DU NAGA**  
Privacy Commissioner

**ATTY. LEANDRO ANGELO Y. AGUIRRE**  
Deputy Privacy Commissioner

Date: \_\_\_\_\_