



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

KRL,

Complainant,

-versus-

CID Case No. 17-K-003

*For: Violation of the Data
Privacy Act of 2012*

**TRINITY UNIVERSITY OF
ASIA, AA, MC, NCB, RG GV,
GCT, RR, MR, PB**

Respondents.

X-----X

DECISION

AGUIRRE, *D.P.C.*

For consideration before this Commission is a complaint filed by KRL against Trinity University Of Asia, **AA, MC, NCB, RG GV, GCT, RR, MR, and PB**, for an indeterminate violation of the Data Privacy Act (DPA).¹

These Proceedings

On 19 April 2018, this Commission, through the Complaints and Investigation Division, conducted a Discovery Conference. At the Conference, the respondents were directed to submit a responsive Comment within ten (10) days from receipt of the Order dated 26 April 2018.²

On 30 April 2018, the respondent university, through counsel, filed a Notice of Entry of Appearance with Motion for Clarification of Procedure. The respondent university raised an issue regarding the propriety of the Commission's act of taking immediate action on the complaint without having the complainant exhaust all the

¹ 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 [DATA PRIVACY ACT].

² Records, p. 46; see NPC Circular No. 16-04, Rule III, Section 15.

administrative remedies available to him. The respondent university also argued that the complaint should have been referred to a Mediation Officer to explore the possibility of first reaching an amicable settlement.

On 18 May 2018, the respondent university filed a Motion to Admit Comment with Partial Compliance, citing the “amount of documentary evidence being required from the respondent University.”³ The individual respondents, AA, MC, NCB, RG, GV, GCT, RR, MR, and PB have not submitted their individual comments. The Comment of the respondent university contained a narration of the incidents and arguments against the complainant’s allegation, and attached as annexes a Privacy Impact Assessment (PIA), DTR and Payroll processes, attendance records of the complainant, as well as affidavits from the Human Resources and Development Unit (HRDU) Director, the Clerk of the College of Business Management and Accountancy (CBMA), the Secretary of the CBMA, a part-time faculty member of the CBMA, the Department Head of the Real Estate Management (REM) of CBMA, and the Finance Director.

Facts

On the basis of these, the following facts were established:

The complainant was a part-time faculty member in the Trinity University of Asia. He was named in a letter-complaint written by the respondents, who are all faculty members of the Trinity University of Asia, informing WUT, president of the university, about alleged unreasonable and oppressive practices of the newly-appointed dean of the College of Business Management and Accountancy (CBMA), CS. Dean CS was the one who informed the complainant about the letter-complaint on 10 November 2017.

Copies of the letter-complaint were also furnished to the Chairman of the Board, the Commission on Higher Education (CHED), and the Regional Director of the Department of Labor and Employment (DOLE).

The pertinent portion of the letter-complaint stated as follows:

Gross ignorance of labor management

³ *Id.*, p. 76

She called HR office and asked if [respondent university] follows the principle “no work, no pay.” She received an affirmative answer. She did not further inquire as to other details. She has no knowledge that holidays and those declared no classes for reason of fortuitous events and force majeure shall be paid to the employees as provided for by Labor Code provisions. She deducted all the hours/period for the holiday and no classes to the prejudice of the faculty members, and erased the total number of days we reported. But for one of her recruited faculty, by the name of **KRL, this dean, favorably endorsed the former’s DTR.** The dates (August 21 and 28) included are the same dates for the other faculty members who were deducted from them but no deduction for Mr. Legaspi. Is she at liberty to make a mockery of the provisions of the Labor Code? To apply the law negatively to those employees, she doesn’t like and to apply the same provisions positively to those employees, she likes? Are we changing now the core values of [respondent university]?⁴

Based on those statements, complainant concludes that the respondents were able to access his DTR and pay slip because they are specific about the deductions and have a strong conviction that he was paid for the dated holidays.⁵ The letter-complaint did not, however, attach copies of the complainant’s daily time record (DTR) or pay slips.

The respondents do not deny having accessed the complainant’s DTR. In fact, one of the respondents, RR, a Department Head of Real Estate Management and faculty member, admits that he chanced upon it when he was scanning the bundled DTRs of the entire CBMA for the month of August 2017.⁶ According to him, as a Department Head, he is sometimes asked to turn over accomplished DTRs of the faculty to the College Clerk or “attendance-in-charge” from the College Secretary when the latter is not present to personally receive it.⁷ He was looking for his DTR in a pile that was alphabetically-arranged when he caught sight of the complainant’s DTR.⁸

Complainant wrote a letter-complaint to the NPC to hold the respondents liable for the damages caused to him personally and professionally.⁹ He stated that he intentionally did not file the complaint with Trinity University of Asia as he already lost trust and confidence in the institution.¹⁰

⁴ *Id.*, at p. 6-7. Emphasis in the original.

⁵ *Id.* at p. 1.

⁶ *Id.* at p. 117.

⁷ *Id.* at p.118.

⁸ *Ibid.*

⁹ *Id.*, at p.2.

¹⁰ *Id.*, at p. 2.

Arguments of the Parties

The complainant now comes to the Commission saying that he feels his right to privacy has been violated.¹¹ According to him, the respondents' act of copy furnishing CHED with their letter-complaint caused his personal information to be exposed to a more severe extent which caused him dismay.¹² He asserts that as a human resource management professor and someone who has been working in the industry for quite some time, he is fully aware that such information should be confidential.¹³ He states that he has experienced sleepless nights from the time he knew about the incident and feels threatened that all the personal information he submitted to the institution is at risk of exposure.¹⁴

The respondent university, in their Notice of Entry of Appearance with Motion for Clarification of Procedure, argues that the complainant failed to allege that he has exhausted all remedies available to him.¹⁵ Citing the Commission's Rules on the Alternative Modes of Dispute Resolution,¹⁶ it likewise raises that the complaint should have been referred to a Mediation Officer for assistance in reaching an amicable settlement¹⁷ since the complaint is devoid of any serious allegations that would warrant immediate conduct of investigation by the Commission.¹⁸

In their comment, the respondent university allege that they have substantially complied with the requirements of Republic Act No. 10173 or the Data Privacy Act of 2012 ("DPA"), having completed phases 1 and 2 of the registration process of the Commission. While it has already completed privacy impact assessments for most of its processes, the DTR system is not one of them. The respondent university conducted a privacy impact assessment on the DTR system after the Discovery Conference.¹⁹

¹¹ *Id.*, at p.1.

¹² *Ibid.*

¹³ *Id.*, at p.1.

¹⁴ *Id.*, at p.2.

¹⁵ *Id.*, at p.52.

¹⁶ NPC Circular 16-04, Sections 25-27.

¹⁷ Records, p. 55.

¹⁸ *Id.*, at p.55-56.

¹⁹ *Id.*, At p. 92-103.

The respondent university asserts that consent of data subjects is not required for the processing of the DTRs, because it is an administrative matter inherent in the operation and legitimate purpose of the university.²⁰ It vehemently denies that there was unauthorized processing of complainant's personal data, as DTRs contain no personal or sensitive personal information, nor are the DTRs considered confidential by the University and its faculty members.

According to them, the DTRs are processed in the following manner:

1. The full time faculty members with overload, and part-time faculty members fill up the DTRs regularly and turn them over to the designated Attendance-in-Charge (usually, the Secretary/Clerk of the College).
2. On every cut-off date (the 15th and 20th of the month), the designated Attendance-in-Charge will check the DTRs for completeness and accuracy. They will forward the same to the office of the Dean for checking, signature, and endorsement to the HRDU.
3. The HRDU staff will check the data in the DTRs and will determine whether the DTR data match the data gathered from the biometrics. Once confirmed, the HRDU staff concerned forwards the attendance records to the HRDU Director for approval.
4. The HRDU forwards the DTR to Finance Unit for payroll processing.²¹

There are instances when the College Clerk or "attendance-in-charge" in the Office of the College Secretary is not around to personally receive the DTRs, particularly for the part-time faculty members who have limited time in the University and who rarely chance upon the College Clerk.²² For purposes of meeting the cut-off date for submission of the DTRs, as a matter of practice, faculty members transmit the DTRs to the College Secretary through the

²⁰ *Id.*, At p. 85.

²¹ *Id.*, At p.107.

²² *Id.*, At p.109.

following methods: (a) by posting it in the corkboard inside the Dean's Office; (b) by asking a co-faculty to submit it to the College Clerk; (c) by asking their respective personal staff to submit the DTR to the College Clerk; (d) by submitting it through the Department Head, and the latter will transmit the DTR to the College Clerk; (e) by asking the class beadle/president to submit the DTR of the faculty concerned to the College Clerk; or (f) course it through the Student Apprentice available.²³

The respondent university denies that the professors illegally accessed complainant's pay slip. According to them, the payroll system of the University is web-based and can only be accessed through the internet by the employee concerned. The pay slips are downloaded by the Payroll Master for viewing and printing by the concerned employee using his/her unique Employee ID code and password.²⁴

Issues

The issues to be resolved in this case are:

1. Whether the Commission erred in taking immediate cognizance of the complaint;
2. Whether the Commission erred in not requiring the parties to submit the complaint to alternative dispute resolution;
3. Whether the complainant's DTR contains personal information; and
4. Whether the respondents committed a violation in relation to the complainant's DTR, warranting a recommendation for prosecution under the Data Privacy Act of 2012.
5. Whether the respondents committed a violation in relation to the complainant's pay slip, warranting a recommendation for prosecution under the Data Privacy Act of 2012.

Discussion

The NPC committed no error in taking immediate cognizance of the complaint.

²³ *Id.*, at p.109.

²⁴ *Id.*, at p.124.

Section 4 of NPC Circular No. 16-04 provides that no complaint shall be entertained unless it has been shown that the complainant has informed, in writing, the concerned entity of the privacy violation or personal data breach and if there was no response within 15 days or timely and appropriate action on the claimed privacy violation or personal data breach.

In his complaint filed on 28 November 2017, the complainant admitted the following:

I intentionally did not file the complaint to [respondent university] as I already lost my trust and confidence to the institution knowing that such information was given and exposed to and by the faculty members.²⁵

Nevertheless, the following exchange during the discovery conference shows that there was an attempt to comply with the requirement of exhaustion of administrative remedies:

KRL: Your honor just to answer that, I approach NPC on November 28, 2017 and they advised me to write a letter first to Trinity University of Asia, so I was advised correctly of what the process is all about and then they ask me to wait for 15 days if there will be no action, that's the time that we will pursue it and I informed them that "after 15 days there was no response from the Human Resource Department regarding my complaint, they weren't able to reach out to me: so that's the time I pursued it."²⁶

The respondent university indeed received a copy of the complaint on the same day it was received by Commission. The complainant stated for the record that when he submitted his complaint with the Commission, he had been advised to wait at least 15 days to afford the respondent university the opportunity to take appropriate action. However, no action was taken on his complaint.

At any rate, the same Section in Circular 16-04 provides that the Commission may waive any or all of the requirements for exhaustion of remedies, at its discretion, upon good cause shown, or if the complaint involves a serious violation or breach of the Data Privacy Act, taking into account the risk of harm to the affected data subject. Considering the allegations on the face of the complaint that the complainant's DTR and pay slips may have been illegally accessed and

²⁵ *Id.*, At p.2.

²⁶ *Id.*, at p.32.

disclosed by the respondents, it is well within the authority of the Commission to take action on this serious allegation of a violation of the DPA.

The decision to submit a case for alternative dispute resolution lies with the parties.

The Alternative Dispute Resolution Act of 2004 (the ADR Act of 2004) embodies the policy of the state to actively promote party autonomy in the resolution of disputes, or the freedom of the parties to make their own arrangements to resolve their disputes.²⁷ Mediation, in particular, is an alternative dispute resolution mechanism characterized by the principles of voluntariness, integrity of determination, and the policy that the decision-making authority in the mediation process rests with the parties.²⁸

At the onset of the Discovery Conference, the complainant was asked if he was willing to compromise and settle amicably.²⁹ To this, the complainant answered in the negative.³⁰ To insist on the conduct of a mediation at this point would have been a violation of not only the ADR Act of 2004 but of the Commission's own alternative dispute mechanisms at that time as well.

The DTR contains personal information.

In their Comment with Partial Compliance, the respondent university attached a Privacy Impact Assessment (PIA) report on the DTR System of Trinity University of Asia.³¹ In the submitted PIA, the threshold analysis contained several questions, including: "(a) Will the project or system involve the collection of new information about individuals?"³² To this, the respondent answered "no."³³

A perusal of the complainant's DTRs, however, would show that the DTR document contains the complainant's handwritten name, the college or unit where he teaches, and the month covered.³⁴ The

²⁷ R.A. 9285, Section 2.

²⁸ *Ibid.*, at Section 8.

²⁹ Records, p. 27-28.

³⁰ *Id.*, at p.28.

³¹ Records, p. 92.

³² Records, p. 93.

³³ *Ibid.*

³⁴ Records, p. 125-129.

majority of the document is a table of dates with filled-out “time in” and “time out” fields. At the bottom of the document, there is a “prepared by” field with the complainant’s handwritten name and signature.³⁵

The DPA provides that personal information is any information, whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual.³⁶

In this case, the complainant’s name, college/unit, and signature are information from which his identity can be directly ascertained. The DTRs of the complainant, then, are considered to contain personal information.

The failure of the respondent university to treat the information collected in the monthly DTRs as personal information resulted in the lack of clearly documented and implemented policies regarding its processing. In conducting a PIA, the personal information controller – the respondent Trinity University of Asia, in this case - must refer to the law to determine what it should consider as personal information. If such collected information meets the definition or enumeration provided by the DPA for personal or sensitive personal information, then the obligations provided by law should be complied with: its processing must be based on any of the lawful criteria under the law, and it must be accorded the adequate organizational, technical, and physical security measures, to name a few. Hence, even if the personal information controller views certain information as “public knowledge,” it should still be properly classified according based on the definition provided by the law in the PIA and treated and protected accordingly.

It should be stressed that a PIA, however, is not an end in itself. In conducting a PIA, a personal information controller is tasked to evaluate and manage impacts on privacy of a particular program, project, process, measure, system or technology product of a personal information controller.³⁷ When no PIA has been conducted yet, it should be done on a per-process basis across all the processes of the of

³⁵ *Ibid.*

³⁶ R.A. 10173, Section 3(g).

³⁷ NPC Advisory 2017-03.

the organization in order to assess the current situation, the existing controls in place, the compliance gaps that have been overlooked, the privacy risks associated with them, and identify the measures needed to address them.

In order to specifically assess these risks, the personal information controllers should carry out their organization's data inventory and data map since both will help in classifying different categories and uses of personal data, and how they flow across the organization.

A PIA should be conducted prior to the deployment of a project, product, or service that involves the collection of personal information. When there are new or revised industry standards, organization policy, law or regulation, or when there are changes to methods in which personal information is handled, a personal information controller should conduct a PIA again on the pertinent process.

To emphasize, it should not only identify the existing controls and risks a project, product, or service may have upon personal data privacy, but it should lead to the identification of remedial actions or mitigation measures necessary to avoid or reduce those risks. These remedial actions and mitigation measures may be incorporated in the organization's Privacy Management Program (PMP).

In this case, the submitted PIA by the respondent university stated the existence of organizational, physical, and technical measures in place for the DTR system. After this, however, the respondent university did not provide details on these or how it intended to address what the Comment referred to as "long-standing practices" of the faculty regarding their submission of DTRs.³⁸ The affidavits of the College Clerk,³⁹ the Secretary of CBMA,⁴⁰ one of the part-time faculty,⁴¹ and a Department Head from the CBMA,⁴² admitted as well that there are several long-standing practices where the DTRs are transmitted through different routes⁴³ that deviate from the official process in handling the employees' DTR.⁴⁴

³⁸ Records, p. 86.

³⁹ *Id.*, at p. 109.

⁴⁰ *Id.*, at p.112.

⁴¹ *Id.*, at p.114.

⁴² *Id.*, at p. 116.

⁴³ *Supra* note 24.

⁴⁴ *Supra* note 22.

Nowhere in the respondent university's submitted PIA were these practices even mentioned, despite the fact that these should be considered as compliance gaps resulting in privacy risks that needed to be mitigated by reasonable and appropriate organizational, physical, and technical measures. By simply treating it as a checklist, the respondent university treated the PIA as the ultimate result, when it should have considered it as a tool to improve its processes and systems for the protection of its stakeholder's privacy.

It is incumbent upon the respondent university to revise its PIA in general and on the DTR system in particular to reflect and address the gaps brought about by actual, current practices and as identified in the letter-complaint.

Respondents did not commit a violation in relation to the complainant's DTR to warrant a recommendation for prosecution.

In analyzing whether there are possible violations by the respondent faculty members of the DPA that warrant a recommendation for prosecution, we primarily look into the different stages of processing that the personal information undergoes, and determine whether each one is supported by one or more lawful basis for processing enumerated in the DPA.

The lack of either a uniform policy or process that covers the actual practices in the handling of the employees' DTR, including the ones identified by the aforementioned affiants, cannot by itself give rise to a cause of action for unauthorized or illegal access to personal information as provided by the DPA.⁴⁵ It was admitted by respondent RR that as a Department Head, he is sometimes asked to turn over accomplished DTRs of the faculty to the attendance-in-charge from the College Secretary when the latter is not present to personally receive

⁴⁵ SEC. 26. *Accessing Personal Information and Sensitive Personal Information Due to Negligence.* - (a) Accessing personal information due to negligence shall be penalized by imprisonment ranging from one (1) year to three (3) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than Two million pesos (Php2,000,000.00) shall be imposed on persons who, due to negligence, provided access to personal information without being authorized under this Act or any existing law.

it.⁴⁶ This color of authority to access the DTRs, with the acquiescence of the faculty members over time, cannot be overlooked.

Indeed, the interests and fundamental rights of the data subject could in particular override the interest of the data controller where personal data are processed in circumstances where data subjects do not reasonably expect further processing.⁴⁷ That cannot be said to be the case here, as the complainant and other faculty members could have reasonably expected the further access of their DTRs by different persons in the college upon submission thereof based on the existing practice of the school.

This Commission has previously decided that this concept of “reasonable expectation” is considered in determining the legitimacy of the additional processing by examining whether such further processing is compatible with the original business purpose communicated to the data subject and not beyond what the data subject may reasonably expect as to the purpose, scope, manner, and extent of the processing of their personal data.⁴⁸

Having discussed respondent professors’ initial access, the next stage of processing in this case was the use of the information in the DTR to support their claim of “gross ignorance of labor management” in their letter-complaint about Dean CS.

The individual respondents used the complainant’s name to give a specific case of “gross ignorance of labor management,” which was one of the allegations against Dean CS. The letter-complaint questioned the Dean’s alleged unequal treatment regarding holidays and suspended class days due to fortuitous events in the DTRs of faculty members, in relation to the provisions of the Labor Code on holiday pay. To the respondent professors’ personal knowledge, the complainant was the only faculty member who did not receive deductions on the holidays of August 21 and 28 of 2017. The use of the complainant’s name, therefore, was necessary for the protection of the respondents’ lawful rights and interests as contemplated by Section 13(f) of the DPA. The fact that the respondents copy-furnished both the CHED and DOLE does not veer away from that lawful criteria,

⁴⁶ *Supra* note 8.

⁴⁷ NPC Advisory Opinion 2018-20.

⁴⁸ *See, Villegas v. Reviles*, NPC Case 17-047, *citing* EU General Data Protection Regulation, Recital 47.

considering the allegations of the letter-complaint may possibly be the concern of these agencies as well.

Although Section 13(f) applies to sensitive personal information while the information involved in this case is just personal information, the protection of lawful rights and interests under Section 13(f) by the respondent faculty members in this case is considered as legitimate interest pursuant to Section 12(f) of the DPA. This section provides that it is lawful to process personal information if it is necessary for the purposes of the legitimate interests pursued by the personal information controller or by a third party or parties to whom the data is disclosed, except where such interests are overridden by fundamental rights and freedoms of the data subject which require protection under the Philippine Constitution.⁴⁹

The DPA is not intended to cover every possible infraction in the workplace or even society. While the complainant may feel aggrieved with the mention of his name in the letter-complaint, it cannot be said, however, that the complainant incurred actual damage, considering the objective of that letter-complaint was to inform the President of Trinity University of their concerns about the Dean and not the complainant. In the event that the circumstances stated in the letter-complaint about the complainant are untrue, there are other remedies available to him under existing laws, although not the DPA. The merits of the letter-complaint and the truth of their claims are irrelevant to our determination whether there was a violation of the DPA in the processing of complainant's DTR.

The respondents did not commit a violation in relation to the complainants pay slip to warrant a recommendation for prosecution under the Data Privacy Act of 2012.

In the complaint, the complainant alleges that "based on [the statements in the respondents' letter], they were able to access [his] pay slip."⁵⁰

In cases filed before administrative or quasi-judicial bodies such as the Commission, a fact may be deemed established if it is supported

⁴⁹ R.A. 10173, Section 12(f).

⁵⁰ Records, p. 1.

by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.⁵¹

The complainant's allegation in relation to his pay slip remains unsubstantiated. This is all the more true considering the affidavit of the Finance Director that stated "any figures or computation in determining one's payroll is done within the department's office and the finance personnel are the only ones who are authorized to view and do the computation" and that "no other department computes the figure, the HRD only provides the supplementary documents in order to arrive with the figure."⁵² There is nothing in the allegations of the complainant that explain how the respondent faculty members could have circumvented the university process on the processing of pay slip to access the same aside from his mere speculation. Notice must also be made that there was no mention of the complainant's salary in the subject letter-complaint to WUT

WHEREFORE, premises considered, the Commission finds no violation of the Data Privacy Act on the part of the respondents Trinity University Of Asia, **AA, MC, NCB, RG GV, GCT, RR, MR, PB**, to warrant a recommendation for prosecution. The complaint filed by complainant KRL is hereby **DISMISSED**.

SO ORDERED.

Pasay City, 19 November 2019.

(Sgd.)
LEANDRO ANGELO Y. AGUIRRE
Deputy Privacy Commissioner

Concurring:

(Sgd.)
IVY D. PATDU
Deputy Privacy Commissioner

(Sgd.)
RAYMUND ENRIQUEZ LIBORO
Privacy Commissioner

⁵¹ Rules of Court, Rule 133, Section 5.

⁵² Records, p. 177

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