



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

RABD

Complainant,

-versus-

NPC Case No. 19-1221
*For: Violation of the Data
Privacy Act of 2012*

FXXX GLOBAL LENDING, INC.

Respondent.

x-----x

DECISION

AGUIRRE, D.P.C.

Before this Commission is a complaint filed by RABD (“Complainant”) against FXXX Global Lending, Inc. (“Respondent”) for a violation of the Data Privacy Act.

The Facts

In the Complaint, Complainant alleged that Respondent sent mass text messages (“text blasts”) to her phone contacts to inform them of her unpaid loan. She further alleges that Respondent sent text messages threatening her using information they collected from her phone.¹ She claimed that Respondent was able to hack her contacts, inbox, and images.²

On 13 September 2019, Complainant sent a letter to the Commission stating thus:

I am writing this letter to request your good office for withdrawal of my filed complaint against FXXX online lending company. After careful consideration, I decided not to take any action against them in order to have peace on both sides.³

¹ Records, p. 3.

²*Id.*, at 5.

³ *Id.*, at 9.

She was informed by the Complaints and Investigation Division that she needed to submit a notarized Affidavit of Desistance.⁴ On 3 March 2020, Complainant submitted her Affidavit of Desistance which stated the following:

1. I am the Complainant in the above-titled complaint filed and pending before the National Privacy Commission against FXXX Global Lending, an online lending mobile application;
2. I realize that I am no longer interested in pursuing this case because I already settled my obligation to (sic) them;
3. I also believe that it is best to end the proceedings in this case.

Premises considered, I am permanently withdrawing my complaint against respondent in the above-titled case. I am no longer interested, and hereby desist, in prosecuting this case.

I am executing this Affidavit of Desistance to have the complaint immediately dismissed and deemed closed.⁵

Complainant personally appeared before the Commission's resident notary public to swear to the due execution of her Affidavit of Desistance. The notary public explained to her the implications and consequences if she desists from proceeding further.

Discussion

Given Complainant's personal appearance before the Commission's resident notary public to attest to her execution of the Affidavit of Desistance, the Commission finds the document to have been willingly and voluntarily executed, without any indication of fraud, deception, or misrepresentation.

The Commission wishes to emphasize that Complainant's Affidavit of Desistance does not *ipso facto* result in the termination of the case nor does it divest the Commission of its jurisdiction to investigate further, *sua sponte*, on the possible criminal liabilities that may result from the alleged violations of the Data Privacy Act.

⁴ *Id.*, at 10.

⁵ *Id.*, at 11.

In this case, however, the Commission is constrained to dismiss the Complaint considering that the allegations cannot be proven without the evidence to be provided by Complainant.

This is consistent with NPC Circular 16-04 (“Rules of Procedure”) which provides:

Section 22. *Rendition of decision.* – The Decision of the Commission shall adjudicate the issues raised in the complaint on the basis of all the evidence presented and its own consideration of the law.⁶

WHEREFORE, all premises considered, the Commission hereby resolves to **DISMISS** the Complaint of RABD against Respondent FXXX Global Lending Inc.

This is without prejudice to the filing of appropriate civil, criminal or administrative cases against the Respondent before any other forum or tribunal, if any.

SO ORDERED.

Pasay City, 25 June 2020.

Sgd.
LEANDRO ANGELO Y. AGUIRRE
Deputy Privacy Commissioner

WE CONCUR:

Sgd.
RAYMUND ENRIQUEZ LIBORO
Privacy Commissioner

⁶ NPC Circular No. 16-04 dated 15 December 2016 (“NPC Rules of Procedure”), Sec. 22.

Sgd.
JOHN HENRY DU NAGA
Deputy Privacy Commissioner

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RABD
Complainant

FXXX GLOBAL LENDING, INC.
Respondent

COMPLAINTS AND INVESTIGATIONS DIVISION
ENFORCEMENT DIVISION
GENERAL RECORDS UNIT
National Privacy Commission