



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

MRS,
Complainant,

-versus-

NPC Case No. 18-152
*For: Violation of the Data
Privacy Act of 2012*

**NATIONAL CONCILIATION
AND MEDIATION BOARD
(NCMB) AND DEPARTMENT
OF LABOR AND
EMPLOYMENT (DOLE)**
Respondents.

X-----X

DECISION

AGUIRRE, D.P.C.:

Before this Commission is a Complaint filed by Complainant MRS against Respondents National Conciliation and Mediation Board (NCMB) and Department of Labor and Employment (DOLE) for an alleged violation of Republic Act No. 10173 (“Data Privacy Act”).

The Facts

Sometime in August 2013, Complainant filed a complaint against her employer for nonpayment of her 13th month pay upon termination of her employment. With the help of Respondents, the settlement between Complainant and her employer was completed in her favor.

In her complaint, Complainant narrates:

I had the impression that this mediation effort of DOLE was private until I searched my name on Google and my name appearing on the search in this link describing my alleged

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URL: <http://privacy.gov.ph> Email Address: info@privacy.gov.ph

constructive dismissal. x x x The article describes my complaint to DOLE and how it was resolved. Although the term “alleged” was

used, it is still damaging to me because it has affected my job applications after that because all they understand is I have a bad record when I thought this was resolved when I was asked to file a resignation instead.¹

She attached to her Complaint the article entitled “NCMB settles labor issues; 10 workers receive P215K thru SENA”. The pertinent portion of the article reads:

“These worker-complainants were attended to by our conciliator mediators, acting as single entry assistance desk officers find mutually acceptable and beneficial solutions to their complaints,” [NCMB Executive Director] said.

He specifically cited [Complainant], senior analyst of Phinma/Trans-Asia Oil who came to complain of alleged constructive dismissal. She also sought assistance for the collection of her unpaid overtime pay and service incentive leave.² xxx

Complainant thereafter filed this complaint with the National Privacy Commission (NPC) for the removal of the article, stating:

I am currently employed but would like this article taken out of then (sic) internet because it might affect my future career plans should I choose to search for a new job. I understand that the DOLE would like to make known their credentials in being effective mediators but this has been five (5) years ago and believe this is already irrelevant.³

Upon the filing of the complaint, Complainant was advised by the Complaints and Investigation Division (CID) to give Respondent the opportunity to address her complaint by informing them of her data privacy concern.

¹ Complaint dated 02 October 2018

²<https://co.ncmb.ph/ncmb-settles-labor-issues-10-workersoreceive-p-215-k-thrusena/?print=pdf>, cited in Note 1

³ Supra at Note 1

Complainant subsequently sent letters to Respondents informing them of her concerns and requesting for the removal of the article from their website.

In the meantime, the case was scheduled for Discovery Conference on 15 November 2018.⁴

Respondent NCMB promptly replied to Complainant's letter on 08 October 2018. They stated that:

In line with this, please be informed that said article has already been deleted in our website. We apologize on (sic) the anxieties this matter caused you specifically on your concern that it might taint your reputation in the eyes of potential employers. The Board does not intend to cause you any distress nor to malign your name. The article was written merely to highlight the success stories in our program implementation. However, we overlooked the aspect of consulting and seeking your permission in posting the article.⁵

On 8 November 2018, Complainant sent an email to the NPC stating:

DOLE has already removed the information they posted online. I will forward their official communication tomorrow. The situation has been resolved. There is no need for further action. Thank you for your assistance!

Consequently, none of the parties appeared at the Discovery Conference on 15 November 2018.

A few months after, Respondent NCMB furnished NPC with a letter that it sent to Google requesting for the permanent removal of the link to the published article from Google's search engine.

Issue

Whether or not Respondent NCMB and DOLE are liable for a violation of the Data Privacy Act of 2012.

⁴ Order to Confer for Discovery, n.d.

⁵ Letter from the NCMB dated 08 October 2018.

Discussion

Respondents are not liable for a violation of the Data Privacy Act of 2012.

NPC Circular 16-04 (“Rules of Procedure”) provides that complaints may be dismissed outright for the following grounds:

1. **The complainant did not give the respondent an opportunity to address the complaint, unless failure to do so is justified;**
2. The complaint is not a violation of the Data Privacy Act or does not involve a privacy violation or personal data breach;
3. The complaint is filed beyond the period for filing; or
4. There is insufficient information to substantiate the allegations in the complaint or the parties cannot be identified or traced.⁶

At the time Complainant filed her complaint with the NPC, she had not yet exhausted her remedies with Respondent. Prior to seeking assistance from the NPC, she had not made any communication with Respondent to request the deletion of the article that mentions her name.

The Commission emphasizes that, where circumstances permit, it is a condition precedent to the filing of complaints that complainants give the respondents the opportunity to address the complaints against them. This is in line with a separate provision in the NPC Rules of Procedure that states thus:

Section 4. Exhaustion of remedies - No complaint shall be entertained unless:

- a. The complainant has informed, in writing, the personal information controller or concerned entity of the privacy violation or personal data breach appropriate action on the same;
- b. The personal information controller or concerned entity did not take timely or appropriate action on the claimed privacy violation or personal data breach, or there is no response from the personal controller within fifteen (15) days from receipt of information from the complainant; xxx⁷

⁶ Section 12, NPC Circular 16-04. Dated 15 December 2016. Emphasis supplied. ⁷
Ibid at Section 4.

In this case, it can be seen that as soon as Complainant communicated her request, Respondent promptly acted thereon and caused the deletion of the article from their website and even coordinated with Google Philippines to facilitate the permanent removal of the link from their search engine.

The resolution of the Complaint among the parties is confirmed with the Complainant's email to NPC stating "the situation has been resolved. There is no need for further action."

WHEREFORE, all the above premises considered, the Commission hereby resolves to **DISMISS** the complaint filed by MRS against Respondent National Conciliation Mediation Board and Respondent Department of Labor and Employment.

SO ORDERED.

Pasay City, 8 June 2020.

(sgd)

LEANDRO ANGELO Y. AGUIRRE

Deputy Privacy Commissioner

WE CONCUR:

(sgd)

RAYMUND ENRIQUEZ LIBORO

Privacy Commissioner

(sgd)

JOHN HENRY DU NAGA

Deputy Privacy Commissioner

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MRS

Complainant

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COMPLAINTS AND INVESTIGATION DIVISION

ENFORCEMENT DIVISION

GENERAL RECORDS UNIT

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