



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

AC,

Complainant,

NPC 21-096

For: Violation of the
Data Privacy Act of
2012

-versus-

ISG,

Respondent.

X-----X

DECISION

AGUIRRE, D.P.C.;

Before this Commission is a complaint filed by AC against ISG for an alleged violation of Republic Act No. 10173 or the Data Privacy Act of 2012 (DPA).

Facts

On 06 November 2020, before AC filed a complaint with the National Privacy Commission (NPC), ISG filed before the Office of the City Prosecutor of Manila a criminal complaint against AC and her adoptive mother, Victoria AC, for unjust vexation and violation of Section 8 of Republic Act No. 11494, otherwise known as Bayanihan to Recover as One Act.¹

The criminal complaint stemmed from a Barangay Kagawad and a Manila Health Officer's house visit to ISG's residence pertaining to the RT-PCR test result of ISG's sister.² The Barangay Kagawad visited ISG's residence to inform them that ISG's sister tested positive for COVID-19.³ Myka Santos, ISG's niece, received the news and denied

¹ Complaint-Affidavit, 19 May 2021, Annex A, in AC v. ISG, NPC 21-096 (NPC 2021).

² *Id.*

³ *Id.*

that her aunt tested positive for COVID-19.⁴ This conversation was overheard by VC who lived across ISG's residence.⁵

In the criminal complaint, ISG used Closed-circuit Television (CCTV) footages as evidence in support of the criminal charges against the ACs.⁶ The CCTV footage showed AC spraying a liquid substance, presumably alcohol, all over his body when he saw ISG and her sister passing near him.⁷ Another CCTV footage showed VC telling a delivery driver to prepare alcohol because he was delivering food to a COVID-19 positive resident.⁸ These incidents happened along the narrow alley that the ACs and the ISGs share.⁹

On 24 February 2021, the City Prosecutor issued a Resolution dismissing the charges for violation of Section 8 of R.A. No. 11494 against the ACs, while dismissing the charges of unjust vexation only against AC.¹⁰

On 19 May 2021, AC filed a Complaint-Affidavit with the Commission against ISG.¹¹ In AC's Complaint-Affidavit, he alleged that ISG committed gross violation of his privacy when she installed the CCTV camera with audio inside her property.¹² AC claims that the CCTV footages show the entrance of ISG's residence, the narrow alley that the ACs and ISGs share, and the façade of AC's residence.¹³ AC claims that he was "taken aback" when he saw the contents of the criminal complaint and saw that the evidence used against him were the CCTV footages.¹⁴ He further claims that the CCTV footages contained "very sensitive footages" of himself and others going about their daily business and they were being recorded without their knowledge and consent.¹⁵

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Complaint-Affidavit, 19 May 2021, Annex A, in AC v. ISG, NPC 21-096 (NPC 2021).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* Annex B.

¹¹ *Id.*

¹² *Id.* at 3.

¹³ Complaint-Affidavit, 19 May 2021, Annex C, in AC v. ISG, NPC 21-096 (NPC 2021).

¹⁴ *Id.* at 2.

¹⁵ *Id.*

AC alleges that ISG recorded his everyday doings in the neighborhood.¹⁶ AC states that “[t]he microphone of [ISG’s] CCTV could pick up the slightest sound from a distance. Hence, it could pick up any conversation from a distance, like a spy satellite.”¹⁷

AC contends that since the criminal case against him has been dismissed, ISG has been using her CCTV to purposely pry into the ACs’ private lives and to watch his every move.¹⁸ AC considers this a gross violation of his privacy.¹⁹ Thus, he alleges that ISG violated the provisions of the DPA and Republic Act No. 4200 otherwise known as Anti-Wire Tapping Act.²⁰

On 13 July 2021, the Commission, through the Complaints and Investigation Division (CID) issued an Order directing ISG to file a verified comment within fifteen (15) calendar days from receipt and to appear for a Preliminary Conference on 21 September 2021.²¹

On 06 August 2021, ISG filed her Verified Comment.²² She admits that she used the CCTV footages as evidence in the criminal case filed against AC.²³ She avers the complaint must be dismissed because it does not allege which provision of the DPA has been violated by the CCTV recording.²⁴ She claims that “[AC] should not be allowed to ISG on a fishing expedition by alleging a violation of the law in general, and then picking out a particular violation as the proceedings ISG on.”²⁵

Further, ISG contends that under Sec. 4(A)(2) of NPC Advisory 2020-04 (Guidelines on the Use of Closed-Circuit Television (CCTV) Systems)²⁶ “security of properties and protection of vitally important interests of individuals is a legitimate reason for installing a CCTV system.”²⁷ ISG contends that she installed the CCTV system to

¹⁶ *Id.* at 2-3.

¹⁷ *Id.* at 1-2.

¹⁸ *Id.*

¹⁹ Complaint-Affidavit, 19 May 2021, at 2-3, *in* AC v. ISG, NPC 21-096 (NPC 2021).

²⁰ *Id.* at 3.

²¹ Order, 13 July 2021, *in* AC v. ISG, NPC 21-096 (NPC 2021).

²² Verified Comment, 06 August 2021, *in* AC v. ISG, NPC 21-096 (NPC 2021).

²³ *Id.* at 1.

²⁴ *Id.* at 1-2.

²⁵ *Id.*

²⁶ National Privacy Commission, Guidelines on the Use of Closed-Circuit Television (CCTV) Systems, Advisory No. 04, Series of 2020 [NPC Advisory No. 20-04], § 4 (A) (2) (16 November 2020).

²⁷ Verified Comment, 06 August 2021, at 2, *in* AC v. ISG, NPC 21-096 (NPC 2021).

protect her rights and to document acts of harassment by AC.²⁸ She also claims that the CCTV system was recording outdoors in a public place. Under Section 4 (E) of NPC Advisory No. 2020-04, CCTV cameras cannot record in places where there is a heightened expectation of privacy.²⁹ She avers that an alley is not a place where there is such heightened expectation.³⁰

On 21 September 2021, both parties appeared in the Preliminary Conference and manifested that they are not seeking the discovery of any evidence or document from each other.³¹ AC manifested his unwillingness to under ISG mediation proceedings.³² The Commission ordered the parties to submit, within fifteen (15) calendar days after the Preliminary Conference, their respective Memoranda discussing and summarizing their respective causes of action, claims, and defenses.³³

On 05 October 2021, AC submitted his Memorandum which merely reiterated the allegations contained in his Complaint-Affidavit.³⁴

On 06 October 2021, ISG filed her Memorandum which contains a mere repetition of the arguments raised in her Verified Comment.³⁵

Issue

Whether the case should be dismissed outright on procedural grounds.

Discussion

The Commission dismisses the case for lack of merit.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Order After the 1st Preliminary Conference, 21 September 2021, *in* AC v. ISG, NPC 21-096 (NPC 2021).

³² *Id.*

³³ *Id.*

³⁴ Complainant's Memorandum, 05 October 2021, *in* AC v. ISG, NPC 21-096 (NPC 2021).

³⁵ Respondent's Memorandum, 06 October 2021, *in* AC v. ISG, NPC 21-096 (NPC 2021).

Section 1 (1) of Rule IV of NPC Circular No. 21-01 (2021 NPC Rules of Procedure) states:

Section 1. *Outright dismissal, when allowed.* – Within thirty (30) calendar days from receipt of the complaint, the investigating officer may give the complaint due course or dismiss the complaint without prejudice, on any the following grounds:

1. **The complaint is insufficient in form or did not comply with Section 3, Rule II of these Rules**, unless failure to do so is justified or excused with good cause[.]³⁶

A complaint may be dismissed outright when it is insufficient in form or it did not comply with Section 3, Rule II of the 2021 NPC Rules of Procedure. Section 3 (1) and (10) of Rule II of the 2021 NPC Rules of Procedure provides:

Section 3. *Form and contents of the complaint.* – The complaint should be in the proper form, as follows:

1. The complaint must be in writing, signed by the party or his or her counsel, and verified in the format prescribed under the Rules of Court.

...

10. **A certification against forum shopping must accompany the complaint.** The complainant shall certify under oath in the complaint, or in a sworn certification annexed and simultaneously filed with the pleading: (a) that he or she has not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his or her knowledge, no such other action or claim is pending with such court, tribunal or quasi-judicial agency; (b) if there is such other pending action or claim, a complete statement of its present status; and (c) if he or she should thereafter learn that the same or similar action or claim has been filed or is pending, he or she shall report that fact within five (5) calendar days therefrom to the NPC.

Failure to comply with the proper form and contents of the complaint may cause for outright dismissal under Section

³⁶ National Privacy Commission, 2021 Rules of Procedure of the National Privacy Commission [NPC 2021 Rules of Procedure] rule IV, § 1 (1) (28 January 2021). Emphasis supplied.

1(1), Rule IV: Provided, an application that does not comply with the foregoing requirements may be acted upon if it merits appropriate consideration on its face, or is of such notoriety that it necessarily contains sufficient leads or particulars to enable the taking of further action.³⁷

Section 3 (1) of Rule II of the 2021 NPC Rules of Procedure states that complaints filed before the Commission should be “verified in the format prescribed under the Rules of Court.”³⁸ Section 4, Rule 7 of the Rules of Court provides:

Section 4. *Verification.* –

...

A pleading is verified by an affidavit of an affiant duly authorized to sign said verification. The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading, and shall allege the following attestations:

- (a) The allegations in the pleading are true and correct based on his personal knowledge, or based on authentic documents;
- (b) The pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and
- (c) The factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

The signature of the affiant shall further serve as a certification of the truthfulness of the allegations in the pleading.³⁹

The Supreme Court ruled that “[v]erification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.”⁴⁰

³⁷ NPC 2021 Rules of Procedure. Rule II, § 3 (1). Emphasis supplied.

³⁸ *Id.*

³⁹ 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 7, § 4.

⁴⁰ Heirs of Josefina Gabriel v. Cebrero, G.R. 222737 (2018).

In this case, AC's Complaint-Affidavit does not specifically state the attestations enumerated under the Rules of Court. While technical rules of procedure do not strictly apply to administrative bodies,⁴¹ the notarized complaint still failed to effectively provide for the required attestations. The notarization only certifies the fact that AC personally executed the document.⁴² Thus, AC's complaint does not substantially comply with the requirement of verification.

As to Section 3 (10) of Rule II of the 2021 NPC Rules of Procedure, it requires that a certification against forum shopping must accompany the complaint.⁴³ AC failed to observe this procedural requirement when he did not attach the certification to his complaint.

The Supreme Court explained the mandatory nature of the certification against forum shopping:

The rule on certification against forum shopping is intended to prevent the actual filing of multiple petitions/complaints involving identical causes of action, subject matter and issues in other tribunals or agencies as a form of forum shopping. This is rooted in the principle that a party-litigant should not be allowed to pursue simultaneous remedies in different forums, as this practice is detrimental to orderly judicial procedure. **Although not jurisdictional, the requirement of a certification of non-forum shopping is mandatory. The rule requires that a certification against forum shopping should be appended to or incorporated in the initiatory pleading filed before the court.** The rule also requires that the party, not counsel, must certify under oath that he has not commenced any other action involving the same issue in the court or any other tribunal or agency.⁴⁴

The Supreme Court further clarified the difference between non-compliance and substantial compliance with the procedural requirements:

A distinction must be made between non-compliance with the requirement on or submission of defective verification, and

⁴¹ Divina Palao v. Florentino International, Inc., G.R. No. 186967 (2017).

⁴² Complaint-Affidavit, 19 May 2021, in AC v. ISG, NPC 21-096 (NPC 2021).

⁴³ NPC 2021 Rules of Procedure. Rule II, § 3 (10).

⁴⁴ Philippine Public School Teachers Association v. Austria-Martinez, G.R. No. 171562 (2006). Emphasis supplied.

non-compliance with the requirement on or submission of defective certification against forum shopping.

...

As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons".⁴⁵

In this case, AC's failure to append or incorporate his certification against forum shopping with his complaint shows non-compliance with the mandatory procedural requirement. There could also be no substantial compliance. He did not provide any attestation that could effectively be considered as a certification against forum shopping incorporated in his complaint.

The 2021 NPC Rules of Procedure provides that there may be a waiver of failure to submit a certification against forum shopping if the complainant may be excused with good cause,⁴⁶ or if it merits appropriate consideration on its face, or, if it is of such notoriety that it necessarily contains sufficient leads or particulars to enable the taking of further action.⁴⁷ In this case, there is nothing in the records that show any of the circumstances to justify the non-compliance of the procedural requirement.

AC has not alleged or shown anything in his complaint that will warrant a waiver of the procedural requirement of a certification against non-forum shopping. Mere allegations in a complaint without submitting any further evidence neither merits appropriate consideration on its face nor is of such notoriety that it necessarily contains sufficient leads or particulars to enable the taking of further action.⁴⁸

In AC's complaint, he alleged that "ISG recorded his everyday doings in the neighborhood"⁴⁹ and that "ISG has been using her CCTV to

⁴⁵ Heirs of Josefina Gabriel v. Cebreiro, G.R. 222737 (2018).

⁴⁶ NPC 2021 Rules of Procedure. Rule IV, § 1 (1).

⁴⁷ NPC 2021 Rules of Procedure. Rule II, § 3 (10).

⁴⁸ See NPC 2021 Rules of Procedure. Rule II, § 3 (1).

⁴⁹ Complaint-Affidavit, 19 May 2021, at 1, in AC v. ISG, NPC 21-096 (NPC 2021).

purposely pry into their private lives.”⁵⁰ The only evidence he submitted to support his allegations were the same CCTV footages that ISG used as evidence in the criminal case for unjust vexation and a violation of R.A. No. 11494. AC did not actually produce his own evidence to support his allegations but merely used the evidence that ISG submitted in a previous case as basis for his complaint before this Commission. Since AC’s complaint lacks evidence to support his allegations, there is nothing in his complaint that warrants a waiver of the procedural requirements.

As a result of the non-compliance with Section 3 of Rule II of the 2021 NPC Rules of Procedure, AC’s complaint should have been dismissed outright and should not have been given due course.

Although this case warrants an outright dismissal for failure to submit a certification against forum shopping, the Commission takes this opportunity to discuss the general considerations of CCTV systems.

NPC Advisory No. 2020-04 (Guidelines on the Use of Closed-Circuit Television (CCTV) Systems) was issued to guide the public on the use of CCTV systems considering its impact on the rights and freedoms of data subjects.⁵¹ The use of CCTV Systems shall be subject to regular review to ensure that its use remains to be necessary for specified and legitimate purposes.⁵²

Section 5 (A) of NPC Advisory No. 2020-04 provides:

Section 5. *Specific use cases.* The use of CCTV systems shall be limited to and consistent with the purpose/s for which the same was established. The use of CCTVs may be for the following instances:

- A. Household. Generally, the use of CCTV systems for purely personal, family or household affairs is outside the purview of this Advisory. Nonetheless, the use of these

⁵⁰ *Id.* at 3.

⁵¹ NPC Advisory No. 20-04, § 1 (B).

⁵² *Id.*

systems shall still bear in mind the rights of every individual to privacy.

Where a CCTV faces outwards from an individual's private property and it captures images of individuals beyond the boundaries of such property, particularly where it monitors a public space, the CCTV system cannot be considered as being for a purely personal, family or household purpose. As such, the operator of such CCTV system is deemed as a PIC and will be subjected to the obligations under the DPA and the provisions of this Advisory.⁵³

Pursuant to Section 5 (A) of NPC Advisory No. 2020-04, a natural or juridical person who sets up a CCTV system for household purposes is generally not considered a Personal Information Controller (PIC), thus, outside the purview of the Advisory and the DPA. Section 5 (A) of NPC Advisory No. 2020-04 also provides that the CCTV system cannot be considered as being for purely household purposes where a CCTV system faces outwards and captures a public space beyond the perimeter of an individual's private property. In such cases, the operator of the CCTV system may be considered a PIC.

Section 5 (A) of NPC Advisory No. 2020-04, however, should be read and understood in accordance with the guidelines provided for in Section 4 of NPC Advisory No. 2020-04.

Section 4(A)(2) and (B) of the same Advisory provides:

Section 4. *Guidelines.* – The processing of personal data in CCTV systems shall be subject to the following guidelines:

A. Legitimate purpose. Prior to installing a CCTV system, the purpose/s for personal data processing using such system must be clearly determined. Such processing may be permitted for the following purposes, except where the same are overridden by the fundamental rights and freedoms of the data subject:

...

2. Security of properties and protection of vitally important interests of individuals;

⁵³ *Id.* § 5 (A).

...

B. Proportionality. The PIC should evaluate whether the installation and operation of CCTV systems and the nature and kind thereof is necessary for its legitimate purpose, considering whether such purposes could be reasonably fulfilled by other less intrusive means.⁵⁴

Under Section 4(A)(2) of NPC Advisory No. 2020-04, security of properties and protection of vitally important interests of individuals are legitimate reasons for installing a CCTV system.⁵⁵ Further, Section 4 (B) of the NPC Advisory No. 2020-04, on proportionality, provides that the operator of the CCTV system should evaluate whether his or her usage of the CCTV system is necessary for its legitimate purpose, and considering whether its legitimate purpose could be reasonably fulfilled by other less intrusive means.⁵⁶ Thus, the processing of personal information shall be adequate, relevant, suitable, necessary, and not excessive in relation to the declared and specified legitimate purpose.⁵⁷

In this case, ISG claims that the purpose for the installation of CCTV systems is to protect her interest in her security and property⁵⁸ as well as protect her rights and document the acts of harassment committed by the ACs against her and her family.⁵⁹ ISG, however, should accomplish her legitimate purpose through the least intrusive means.

To determine whether the installation and operation of the CCTV system is proportional to the operator's legitimate purpose, the location and placement of the CCTV system must also be considered. Section 4 (E) of NPC Advisory No. 2020-04 provides guidelines on the location and placement of the CCTV system:

Section 4. *Guidelines.* – The processing of personal data in CCTV systems shall be subject to the following guidelines:

⁵⁴ *Id.* § 4 (A) (2), (B).

⁵⁵ *Id.* § 4 (A) (2).

⁵⁶ *Id.* § 4 (B).

⁵⁷ National Privacy Commission, Rules and Regulations Implementing the Data Privacy Act of 2012, Republic Act No. 10173, rule IV, 18 (c) (2016).

⁵⁸ Respondent's Memorandum, 06 October 2021, in AC v. ISG, NPC 21-096 (NPC 2021).

⁵⁹ Verified Comment, 06 August 2021, in AC v. ISG, NPC 21-096 (NPC 2021).

...

E. Location and placement. To ensure that CCTV systems capture footages in a manner consistent with the DPA, the location and angles of the cameras must be carefully considered. CCTVs shall only be used to monitor the intended spaces, taking into consideration the purpose for monitoring the same.⁶⁰

The manner of positioning the CCTV system and the purpose for monitoring the intended spaces govern the intention of the operator of the CCTV system. In this case, ISG's CCTV system captures the entrance to her residence, the alley, and the façade of AC's house.⁶¹ Considering the narrowness of the alley in this situation, it is, however, unavoidable for the CCTV system to capture the alley and the façade of AC's house. Nevertheless, the CCTV operator must exert a concerted effort in capturing more of his or her household rather than public spaces such as a shared alley, or another's property.

Here, the angle of ISG's CCTV system may be repositioned to capture more of her own residence and not the public space and façade of AC's house. Otherwise, ISG's usage of the CCTV system may not be in accordance with the guidelines of legitimate purpose and proportionality.

As discussed, AC did not substantially comply with the verification requirement and did not attach a certification against forum shopping with his complaint. The non-observance of these procedural requirements is deemed fatal to his case. Thus, the Commission finds that AC's failure to comply with the verification and certification requirements under the 2021 NPC Rules of Procedure warrants an outright dismissal of the case.

WHEREFORE, premises considered, this Commission resolves that the complaint filed by AC against ISG is hereby **DISMISSED** for lack of merit.

⁶⁰ NPC Advisory No. 20-04, § 4 (E).

⁶¹ Complaint-Affidavit, 19 May 2021, Annex C, in AC v. ISG, NPC 21-096 (NPC 2021).

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

SO ORDERED.

City of Pasay, Philippines.
16 May 2022.

LEANDRO ANGELO Y. AGUIRRE
Deputy Privacy Commissioner

WE CONCUR:

JOHN HENRY D. NAGA
Privacy Commissioner

DUG CHRISTOPER B. MAH
Deputy Privacy Commissioner

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COMPLAINTS AND INVESTIGATION DIVISION
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