



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

**PRIVACY POLICY OFFICE
ADVISORY OPINION NO. 2022-025¹**

22 November 2022

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: 201 FILES OF GOVERNMENT EMPLOYEES

Dear [REDACTED]

We respond to your inquiry concerning the rights of government employees to their 201 files and other information processed by a government agency.

You inform that you have been an employee of the Department of Agriculture [REDACTED] [REDACTED]. In September 2020, you received a Special Order reassigning you to a remote province. You filed an appeal before the Civil Service Commission (CSC) to assail your reassignment. Pending your appeal, you requested to be reinstated at your original station but was denied. Months later, you were dropped from the rolls without notice. As a result, you filed another petition before the CSC for being dropped from the rolls.

To support your petition, you requested for a copy of your 201 file which is in the custody of the Human Resources Office of DA-[REDACTED]. In your letters to the Officer-in-Charge Regional Director (OIC-RD), you insisted that government employees are entitled to copies of their 201 files citing relevant CSC rules and the Data Privacy Act of 2012.

Through a 31 March 2022 letter, the OIC-RD denied your request for copies of your 201 Files stating that:

“... as an employee that is deemed Dropped from the Rolls, the Office has no more recourse left but to turn-over his/her 201 files. However, MC Number 1, series of 2011, of the Civil Service Commission, generally instructed the NGAs, GOCCs and SUC to undertake the turning over of 201 files to all those applicable former employees perhaps in batches, as the procedure provided in the mentioned MC entails coordination with several offices and requires the necessary clearances from affected former employees.”

¹ Tags: 201 files; government employee; Civil Service Commission; right to access; data subject rights; legal claims.
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In addition, the OIC-RD reasoned that, “as a former government employee, the provisions of the Data Privacy Act of 2012 do not apply to you.” He cited Section 4 (a) of the Data Privacy Act of 2012² (DPA) and stated that the provisions of the DPA should be read together with the necessary Civil Service Rules and Issuances.

201 files; government employees are data subjects with data privacy rights; the establishment, exercise or defense of legal claims

We refer to CSC Memorandum Circular No. 8, series of 2007 (MC 08-2007)³ which states that government employee’s 201/120 file consist of copies of the following documents:

- a) Appointments [CSC Form 33]
- b) Assumption to Duty
- c) Certification of Leave Balances (for transferees)
- d) Clearance from Property and Money Accountabilities (for transferees)
- e) Contracts of Services (if applicable)
- f) Copies of Certificates of Eligibilities
- g) Copies of Diplomas, Commendations and Awards
- h) Copies of Disciplinary Actions (if any)
- i) Copy of Marriage Contract (if applicable)
- j) Designations
- k) Medical Certificate [CSC Form 211]
- l) NBI Clearance
- m) Notice of Salary Adjustments/Step Increments
- n) Oath of Office
- o) Personal Data Sheet [CSC Form 212]
- p) Position Description Forms

In Advisory Opinion No. 2018-028,⁴ we had the occasion to discuss that an employee, being a data subject, is entitled to have reasonable access to the personal information in his/her 201 file:

Accordingly, Employee A, being a data subject, is entitled to have reasonable access to the personal information in her 201 file. She may exercise her right to access in the manner provided under the DPA but she must still abide by company protocols in accessing her 201 file.

Under the law, the company is obligated to respond and grant reasonable access to subject request. Should the request be ignored or denied, a complaint with the NPC may be initiated following the procedure laid down in NPC Circular No. 2016-04, as one of NPC’s functions is to enforce and effectively implement the provisions of the DPA, including those pertaining to the rights of data subjects.

² 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 of 2012], Republic Act No. 10173 (2012).

³ Civil Service Commission, “Management of 201/120 Files” [CSC Memorandum Circular No. 8, series of 2007], 17 May 2007 (available at http://www.csc.gov.ph/2014-02-21-08-28-23/pdf-files/category/32-mc-2007.html?download=321_mc8s2007)

⁴ National Privacy Commission, NPC Advisory Opinion No. 2018-028 (16 May 2018).

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In addition, the National Privacy Commission (NPC) issued NPC Advisory No. 2022-01, “Guidelines on Requests for Personal Data of Public Officers”⁵ to provide guidance in dealing with personal and sensitive personal information (collectively, personal data) of government employees. The said Advisory unequivocally states that public officers and employees are recognized as data subjects with all the concomitant rights and available redresses, *viz.*:

C. Public officers are data subjects within the purview of the Act, with all the concomitant rights and available redresses under the same. However, certain personal data relating to their positions and functions is subject to certain exceptions provided in the Act and disclosures required under other applicable laws.

In these exceptional cases, these information relating to their position and official functions are not covered by the DPA. However, the exemption is not absolute. The exclusion of such information from the scope of the law is interpreted as an exemption from complying with the requirements of Sections 12 or 13 on lawful criteria for processing; and the collection, access, use, disclosure, or other processing is limited to the minimum extent necessary to achieve the purpose, function, or activity concerned. Personal information controllers (PICs) undertaking the processing of such information remain to be subject to the other requirements of the DPA, including implementing security measures to protect personal data and upholding the rights of the public officers as data subjects.⁶

Consequently, the unequivocal statement of the OIC-RD that the provisions of the DPA do not apply to government employees is misplaced. As a data subject, you have data privacy rights to your own personal data, including the right to access such information. A PIC must have policies to facilitate the exercise of a data subject’s right to access. These policies must include, among others, the procedure to acquire the information, the retention period of the data and the mode of disposal or deletion. Thus, you should be provided with the information you requested in accordance with the policies of DA-██████ on a data subject’s right to access information and the retention period for personal and sensitive personal information, as well as other existing policies related to government employment records.

In addition, you mentioned that your request for a copy of your 201 files is to support your petition before the CSC to question your reassignment and your eventual dropping from the rolls. Thus, the request is made for the establishment, exercise or defense of legal claims which is a lawful criterion for processing under Section 13 (f) of the DPA, *to wit*:

SECTION 13. Sensitive Personal Information and Privileged Information. – The processing of sensitive personal information and privileged information shall be prohibited, except in the following cases: x x x

(f) The processing concerns such personal information as is necessary for the protection of lawful rights and interests of natural or legal persons in court proceedings, or the establishment, exercise or defense of legal claims, or when provided to government or public authority.

In *EA and TA vs. EJ, EE and HC* the Commission emphasized that:

“...processing as necessary for the establishment of legal claims” does not require an

⁵ National Privacy Commission, Guidelines on Requests for Personal Data of Public Officers [NPC Advisory No. 2022-01], (4 February 2022), available at: <https://www.privacy.gov.ph/wp-content/uploads/2022/02/NPC-Advisory-No.-2022-01-Request-for-Personal-Data-of-Public-Officers.pdf>.

⁶ *Id.*, at §3(C). (Emphasis supplied.)

existing court proceeding. To require a court proceeding for the application of Section 13(f) to this instance would not only be to disregard the distinction provided in the law but the clear letter of the law as well. After all, the very idea of “establishment ... of legal claims” presupposes that there is still no pending case since a case will only be filed once the required legal claims have already been established.

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The DPA should not be seen as curtailing the practice of law in litigation. Considering that it is almost impossible for Congress to determine beforehand what specific data is “necessary” or may or may not be collected by lawyers for purposes of building a case, applying the qualifier “necessary” to the second instance in Section 13(f) therefore, serves to limit the potentially broad concept of “establishment of legal claims” consistent with the general principles of legitimate purpose and proportionality.⁷

The turnover of 201 files under CSC Memorandum 1, Series of 2011 is separate from a government employees' exercise of his right to access.

The OIC-RD referred to CSC Memorandum Circular No. 1, Series of 2011 (MC 01-2011)⁸ in refusing to provide you with your 201 files. MC 01-2011, which is an addendum to MC 08-2007 on the Management of 201/120 files of government employees, provides for guidelines on how the turnover of 201/120 files should be done in case personnel resigns, retires or is separated.

Since you are requesting for your 201 file to support your petition against what you perceive to be an unjust personnel action, going through the processes described under MC 01-2011 might be against your interest. Thus, the NPC takes this opportunity to state that the exercise of your right to access your personal data is separate from the processes that a government employee needs to undergo for the turnover of 201 files in cases of separation, retirement, or resignation.

The NPC subscribes to the harmonization of existing laws and relevant government issuances. However, it must be noted that in this situation, you are contesting your separation from the service. This should not hinder your right to access your own personal data. Neither should your right to access your information be detrimental to your petition.

Moreover, it is evident that you are not requesting for the turnover of your 201 files but only for copies of the files to support your petition. On this note, MC 08-2007 provides that the head of office in charge of Human Resource Management shall “provide the personnel concerned with original copies of the agency and approved appointment as well as duplicate/machine copies of document in the 201/120 file for their own record.”⁹

This means that access to such information should be allowed even without the need to go through the process of turning over of 201 files. Further, MC 08-2007 provides that that the head of office in charge of Human Resource Management shall also be responsible for the

⁷ EA and TA vs. EJ, EE and HC, NPC 17-018, Decision dated 15 July 2019, at page 8.

⁸ Civil Service Commission, “Addendum to CSC Memorandum Circular No. 8, s. 2007 on Management of 201/120 Files” [CSC Memorandum Circular No. 1, series of 2011], 17 January 2011 (available at <http://www.csc.gov.ph/phocadownload/userupload/itduser/mc01s2011.pdf>).

⁹ CSC Memorandum Circular 08, series of 2007.

establishment, maintenance and disposal of 201/120 files.¹⁰ Thus, in accordance with MC 08-2007 and NPC Advisory No. 2022-01, the Department of Agriculture should have a mechanism to enable the exercise of the right to access personal and sensitive personal information, including its employees' 201 files, without stringent and excessive requirements.

Please be advised that this Advisory Opinion was rendered based solely on the information you have provided. Any extraneous fact that may be subsequently furnished to us may affect our present position. Please note further that our Advisory Opinion is not intended to adjudicate the rights and obligations of the parties involved.

Please be guided accordingly.

Very truly yours,

(Sgd.)

FRANKLIN ANTHONY M. TABAQUIN IV

Director IV, Privacy Policy Office

¹⁰ *Id.*