



MIP,

Complainant,

NPC 19-1411

-versus-

For: Violation of the
Data Privacy Act of
2012

**COLLIERS INTERNATIONAL
PHILIPPINES represented by
RDR, EDS, JSA, and ALA.**

Respondent.

X-----X

DECISION

AGUIRRE, D.P.C.;

Before this Commission is a Complaint filed by MIP (Complainant) against Colliers International Philippines (Colliers), represented by RDR, EDS, JSA and ALA for alleged violations of Republic Act No. 10173 or the Data Privacy Act of 2012 (DPA).

Facts

MIP is a current and active paying member of Ultima Residences Condominium Corporation (URCC).¹ Colliers International Philippines (Colliers) has been the property manager of URCC since January 2018.² According to Colliers, it does not manage URCC since URCC is managed by its own Board of Directors (BOD).³ Meanwhile, respondents EDS, ALA, and JSA are former property managers of Colliers.⁴

¹ Affidavit/Complaint, 19 September 2019, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2019).

² *Id.*

³ Verified Comment, 03 June 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁴ Email from ARV to NPC Complaints and Investigation Division (CID), 16 May 2022, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

On 19 September 2019, MIP filed his Affidavit/Complaint against Colliers, EDS, ALA, and JSA for alleged violation of Sections 25, 31, 32, and 33 of the DPA.⁵

MIP alleged that Colliers does not have legal rights to manage URCC because of a violation of Section 44 of Republic Act No. 11232 or the Revised Corporation Code of the Philippines.⁶ As such, MIP argues that Colliers is not authorized to handle URCC's owners' and guests' information.⁷

MIP explained that Colliers collects information of the condominium unit owners and their guests without their consent.⁸ He recounted that Colliers required "registration of contracts" and the collection of identification cards (ID) and passports of owners and their guests in the lobby.⁹ He also argues that Colliers had no "legitimate bases" when it disclosed closed-circuit television (CCTV) recordings of him during a URCC special meeting.¹⁰

On 02 October 2018, URCC held a special meeting where it played two (2) CCTV recordings showing MIP.¹¹ The first video showed MIP walking in the condominium premises while grabbing his own suitcase.¹²

MIP recalled that after the first video was shown, ALA and EDS stated that MIP "trespassed into the condominium to take his bag."¹³

In a Memorandum dated 06 July 2018, however, the Property Management Office (PMO) informed MIP that its security team spotted MIP "twisting the CCTV units from its original position facing [our] common hallways to a different angle opposite the

⁵ Affidavit/Complaint, 19 September 2019, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2019).

⁶ *Id.*

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 3.

¹¹ Affidavit/Complaint, 19 September 2019, at 2, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2019).

¹² *Id.*

¹³ *Id.*

aim.”¹⁴ The PMO reported that MIP entered another homeowner’s vacant unit and pulled out his black travel bag and small pail that he left in the room.¹⁵

The second video showed MIP and another property owner walking in the Property Management Office (PMO).¹⁶

MIP claimed that Colliers violated the DPA during the meeting due to its “malicious and unlawful disclosure of his personal information and unauthorized processing of personal information and sensitive personal information.”¹⁷

MIP also claimed that EDS and ALA “conspired” to violate the DPA.¹⁸ MIP narrated that on 04 July 2018, SP, a member of the BOD, emailed EDS and ALA stating:

A, can you please check our CCTV to see if we could catch these culprits in action. Let’s print and post violators in the bulletin and show the clip during the general assembly.¹⁹

On 02 May 2022, the National Privacy Commission (NPC), through its Complaints and Investigation Division (CID), issued an Order (To File Verified Comment and Appear Virtually for Preliminary Conference).²⁰ In the Order, the preliminary conferences were set for 07 June 2022 and 05 July 2022.²¹

On 16 May 2022, Colliers sent a letter requesting an extension of fifteen (15) days to file its comment to give them “ample time to review the documents and evidence [they have] on file.”²² Colliers

¹⁴ Verified Comment, 03 June 2022, at 5, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

¹⁵ *Id.*; Letter from Russel S. Pernites to MIP, 19 February 2019, at 2, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2019).

¹⁶ Affidavit/Complaint, 19 September 2019, at 2, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2019).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Order (To File Verified Comment and Appear Virtually for Preliminary Conference), 02 May 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

²¹ *Id.*

²² Email from ARV to National Privacy Commission, 17 May 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

also manifested that EDS, JSA, and ALA are no longer connected with Colliers.²³

On 17 May 2022, Colliers filed a Motion for Extension of Time to File a Verified Comment.²⁴ Colliers alleged that it has yet to engage the services of a lawyer, and it still must go over pertinent documents and files.²⁵ Colliers reiterated that EDS, JSA, and ALA are no longer employees of the company.²⁶

On 20 May 2022, the CID issued an Order (Granting the Request for Extension and the Motion for Extension of Time to File Verified Comment).²⁷ Colliers was given until 03 June 2022 to file its verified comment.²⁸

On 03 June 2022, Colliers filed its Verified Comment.²⁹ At the outset, Colliers emphasized that EDS, JSA, and ALA are no longer connected with Colliers.³⁰

Colliers claimed that it did not violate the Corporation Code because Colliers is the designated property manager of URCC.³¹ It explained that URCC engaged Colliers' property management services to oversee the common areas of the condominium.³²

Colliers added that questions on the engagement of Colliers is beyond the NPC's jurisdiction.³³ Further, Colliers stated that URCC instructed the collection of personal data from people entering the property to ensure the safety and security of its unit owners.³⁴

²³ *Id.*

²⁴ Motion for Extension of Time to File Verified Comment, 17 May 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Order (Granting the Request for Extension and the Motion for Extension of Time to File Verified Comment), 20 May 2022, at 1, 17 May 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

²⁸ *Id.*

²⁹ Verified Comment, 03 June 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

³⁰ *Id.*

³¹ *Id.* at 2.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

According to Colliers, the condominium is not a public property so access and entry to the premises is legally and validly regulated.³⁵

Colliers also attached a sample of a “Move-In Form”, which is usually accomplished by a registered owner or lessee to list a unit’s occupants.³⁶ Only those names written in the form will be allowed to enter or have access to the unit, enter the common areas, and use the common facilities of the condominium.³⁷ Further, guests of unit owners were required to register and provide proof of their identities “for the common security and safety” of the building’s occupants.³⁸

As for the disclosure of CCTV footage that depicted MIP, Colliers clarified that the BOD’s investigation required the review of the CCTV footage to “catch the culprits in action.”³⁹ Colliers emphasized that the directive for the investigation was not aimed against any specific individual but rather against those who may have violated the URCC rules and regulations.⁴⁰

Colliers alleged that the administrative investigation through the review of the CCTV footage was executed for a valid, legal, and legitimate purpose, namely, an administrative investigation in relation to accusations made by MIP against Colliers.⁴¹ Colliers reiterated that MIP’s allegation that Colliers “conspired” to violate Sections 31 and 32 of the DPA by “planning to authorize data processing” is untenable.⁴²

According to Colliers, the letter of URCC’s legal counsel dated 19 February 2019 to MIP shows the “root cause” of the issue.”⁴³ In the letter, URCC asserted that prior to the special meeting where the CCTV footage was presented, MIP “fabricated a lie against the Colliers’ PMO staff.”⁴⁴ URCC explained that MIP made unsubstantiated claims against Colliers’ staff members that they

³⁵ Verified Comment, 03 June 2022, at 2, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

³⁶ *Id.* Annex 3.

³⁷ *Id.*

³⁸ *Id.* at 3.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Verified Comment, 03 June 2022, at 3, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁴² *Id.*

⁴³ *Id.* Annex 4.

⁴⁴ *Id.*

“don’t show up for work on time” and that “they left the air conditioners and lights turn on even after office hours.”⁴⁵ URCC also insisted that MIP himself entered the PMO premises on a non-working holiday, intentionally tried to turn around the CCTV camera to an “off-direction”, turned on all the air conditioners and lights, then proceeded to take a video of the empty office.”⁴⁶ URCC stated that MIP circulated these allegations to all URCC condominium unit owners by sending a mass e-mail with an attached video depicting an empty office.⁴⁷

URCC stated that the PMO informed MIP through a Memorandum dated 06 July 2018 that its security team spotted him “twisting the CCTV units from its original position facing [their] common hallways to a different angle opposite the aim.”⁴⁸ The PMO reported that MIP entered another homeowner’s vacant unit and pulled out his black travel bag and small pail that he left in the room.⁴⁹

URCC argued that this was a plot crafted by MIP to support his statement that Colliers is not fulfilling its responsibility.⁵⁰

In the letter, URCC also explained to MIP the reason it showed the CCTV footage during the special meeting:

WHY WAS THE CCTV FOOTAGE OF YOU MAKING THE VIDEO SHOWN AT THE SPECIAL MEETING?

At the meeting, this supposed "misconduct" of Colliers staff that you authored was scrutinized and brought up by some homeowners, **so the concerned Colliers staff rightfully defended themselves by relating the whole incident of your scheme.**

One homeowner asked for the CCTV footage to be shown, in order to clarify on who between the two of you was telling the truth. It was only then that Colliers showed it, not to discredit you personally, but to bring out the truth of the matter.⁵¹

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Verified Comment, 03 June 2022, Annex 4, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁴⁸ *Id.* at 5.

⁴⁹ *Id.* at 6.

⁵⁰ *Id.* at 5.

⁵¹ *Id.* Annex 4.

In its Verified Comment, Colliers stated that an investigation was conducted and the viewing of the CCTV became necessary on account of the “false accusations” made by MIP.⁵² Since the CCTV footage contradicts MIP’s allegations, MIP “now cries foul and [claims] a violation of his privacy.”⁵³ It also pointed out that MIP is a “notorious violator” of the rules, regulations, and policies of URCC, and legal actions that had been brought against him in court.⁵⁴

Colliers argued that it did not violate the provisions of the DPA because there was “no malicious and unlawful disclosure made on [MIP’s] personal information.” Collier argued further that the viewing of the CCTV footage was for a legitimate purpose, and it was necessary “as it was done on account of an administrative investigation conducted by URCC[.]”

Given the foregoing, Colliers prayed that the complaint be dismissed for utter lack of merit.⁵⁵

On 06 June 2022, Colliers filed an Urgent Motion for Resetting dated 03 June 2022.⁵⁶ Colliers alleged that its counsel was already scheduled to appear in a prior case and, therefore, cannot attend the scheduled Preliminary Conference on 07 June 2022.⁵⁷

On the same day, MIP filed a Reply to Defendants [sic] Verified Comment and Objections to “Defendant’s Urgent Motion for Resetting” dated 06 June 2022.⁵⁸

In his Reply, MIP alleged that Colliers’ Verified Comment was based on hearsay and had no first-hand witness or verification document.⁵⁹

⁵² *Id.* at 5.

⁵³ Verified Comment, 03 June 2022, at 5, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁵⁴ Letter from Russel S. Pernites to MIP, 19 February 2019, at 5, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2019).

⁵⁵ Verified Comment, 03 June 2022, at 7, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁵⁶ Urgent Motion for Resetting, 06 June 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁵⁷ *Id.* at 2.

⁵⁸ Reply to Defendant’s Verified Comment & Objection to Defendants “Urgent Motion for Resetting,” 06 June 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁵⁹ *Id.* at 2.

MIP also argued that the annexes submitted by Colliers show “several unverified [and] false allegations [and] doesn’t have witnesses to prove it[.]”⁶⁰ MIP concluded that this proves the defendants are “mishandling private data of URCC owners” as he had alleged in his Affidavit/Complaint.⁶¹

MIP further argued that since neither he nor other URCC owners gave authority to Colliers to manage URCC, Colliers “never gained the legal authority to manage, process or gather private owner data of URCC owners or their guests’ visiting condos.”⁶²

As for the Move-In Form, MIP argued that Colliers failed to show any policy or contract that requires such document for private guests.⁶³ According to MIP, Colliers admitted that they are only managing common areas, so they do not have authority to log visitors’ information for private condos.⁶⁴ MIP stated Colliers was “overreaching” by asking for IDs and other details from guests.⁶⁵

As for the letter from URCC’s legal counsel, MIP argued that it was hearsay and speculation and only proved that Colliers and its employees “maliciously displayed” his “private data” during a public meeting.⁶⁶

MIP also objected to Colliers’ Urgent Motion for Resetting dated 03 June 2022, arguing that it was intended to delay the proceedings.⁶⁷

On 07 June 2022, the CID issued an Order (Granting the Respondent’s Urgent Motion for Resetting and Resetting the 1st Preliminary Conference from 07 June 2022 to 05 July 2022).⁶⁸ The first preliminary conference was reset to 05 July 2022.⁶⁹

⁶⁰ *Id.* at 3.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 4.

⁶⁴ Reply to Defendant’s Verified Comment & Objection to Defendants “Urgent Motion for Resetting,” 06 June 2022, at 4, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 6.

⁶⁸ Order (Granting the Respondent’s Urgent Motion for Resetting and Resetting the 1st Preliminary Conference from 07 June 2022 to 05 July 2022, 07 June 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁶⁹ *Id.*

On 08 June 2022, the CID issued an Order (Noting the Complainant's Reply to Defendants Verified Comment & Objection to Defendant's "Urgent Motion for Resetting").⁷⁰

On 05 July 2022, both parties attended the first Preliminary Conference.⁷¹ Colliers' counsel manifested that pursuant to A.M. No. 20-12-01-SC on the guidelines on the conduct of videoconferencing, MIP should indicate his whereabouts.⁷² The CID required Colliers to file a written motion regarding its request for MIP to disclose his location within ten (10) days from receipt.⁷³ The Preliminary Conference was reset to a third schedule on 23 August 2022 to give Colliers time to file the motion.⁷⁴

On 06 July 2022, Colliers filed an Omnibus Motion praying that MIP be directed to disclose his location:

However, during the proceedings, Complainant refused to disclose his specific location. Accordingly, Respondents requested from the Honorable Hearing Officer to require at least for the said Complainant to disclose whether he is in the Philippines or outside the Philippines, citing that if indeed Complainant is outside the Philippines, then for him to participate in the videoconference hearing, he must be in the Philippine Embassy or Consulate office of the country or State wherever he is during the proceedings.

...

WHEREFORE, premises considered, it is respectfully prayed that an Order be issued directing Complainant to disclose his location and if he is outside the Philippines, comply with the provisions under A.M. No. 20-12-01 SC, more particularly, on the filing the required motion to conduct the videoconferencing at his end at an embassy or consulate of the Philippines.⁷⁵

⁷⁰ Order (Noting the Complainant's Reply to Defendants Verified Comment & Objection to Defendant's "Urgent Motion for Resetting"), 08 June 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁷¹ Order (After the 1st Preliminary Conference held on 05 July 2022 and Submission of Respondent's Motion), 05 July 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁷² *Id.*

⁷³ *Id.* at 2.

⁷⁴ *Id.*

⁷⁵ Omnibus Motion, 06 July 2022, at 3, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

On the same day, MIP filed an Objection to Respondents Omnibus Motion.⁷⁶ MIP claimed that A.M. No. 20-12-01-SC is discretionary and does not apply to administrative hearings, and that Colliers filed the motion in bad faith.⁷⁷

On 19 July 2022, the CID issued a Resolution (of Respondent's Omnibus Motion dated 06 July 2022).⁷⁸ The CID resolved that parties are required to disclose their location pursuant to NPC Advisory 2020-02.⁷⁹

On 05 August 2022, MIP filed for a Motion for Discovery of Evidence.⁸⁰ MIP requested that Colliers produce all the evidence relating to the BOD investigation, CCTV footage, meeting records, and URCC policies on obtaining visitors' information in its possession.⁸¹

On 23 August 2022, both parties attended the second preliminary conference where MIP disclosed that he was in Cleveland, Ohio.⁸²

During the second Preliminary Conference, MIP admitted that:

1. Colliers is the property manager of URCC;
2. He filed a complaint against Colliers PMO Staff before the Colliers Ethics Committee in the United States;
3. MIP accused Colliers PMO staff of malversation and misconduct in the management of URCC;
4. MIP resorted to name-calling the Board of URCC by saying that it was inefficient, incapable, and a "Board of Deflectors";

⁷⁶ Objection to Respondents Omnibus Motion, 06 July 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁷⁷ *Id.*

⁷⁸ Resolution of Respondent's Omnibus Motion dated 06 July 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁷⁹ *Id.* at 2.

⁸⁰ Motion for Discovery of Evidence, 05 August 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁸¹ *Id.*

⁸² Order (After the 2nd Preliminary Conference held on 23 August 2022 and Requiring the Parties to Submit a Filled-Out Application for Mediation Form), 23 August 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

5. There was a brawl between MIP and another URCC homeowner that resulted in the filing of cases against MIP; and
6. MIP received a Memorandum for repositioning the CCTV cameras without the consent of the PMO.⁸³

Colliers, on the other hand, admitted that:

1. EDS, JSA, ALA were its employees at the time of the acts complained of;
2. The counsel for URCC and Colliers is the same, and that Atty. RP used to work for the law firm hired by URCC and Colliers; and
3. MIP was also ordered to submit a motion specifying documents requested from Colliers.⁸⁴

On 06 September 2022, the CID issued an Order to Mediate dated 20 September 2022.⁸⁵ The CID also issued an Order (On the Error in the Caption of the Orders issued after the Preliminary Conference).⁸⁶

On 25 October 2022, the CID issued a Notice of Non-Settlement of Dispute.⁸⁷

On 17 November 2022, the CID issued a Resolution (Partially Granting the Motion for Discovery of Evidence dated 05 August 2022, Lifting the Suspension of Complaints Proceedings, and Requiring the Parties to Submit their Simultaneous Memoranda).⁸⁸ In the Resolution, the CID required Colliers to submit the following documents:

Item No. 4: Minutes, meetings, records and CCTV clips of an alleged plan to post data of other URCC owners including complainant

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Order to Mediate, 06 September 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁸⁶ Order (On the Error in the Caption of the Orders issued after the Preliminary Conference), 06 September 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁸⁷ Notice of Non-Settlement of Dispute, 25 October 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁸⁸ Resolution (Partially Granting the Motion for Discovery of Evidence dated 05 August 2022, Lifting the Suspension of Complaints Proceedings), 17 November 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

Item No. 5: Minutes of URCC meeting altering house rules to allow Colliers to post videos and information of owners on bulletin boards.

Item No. 7. 1 Minutes of the meeting and documents presented during the URCC Annual Board of Directors meeting held on 02 October 2018

Item No. 10: URCC policies, minutes, and resolutions requiring Colliers to stop private guests and obtain information from them, including ID and a sign-up sheet that includes the guest's phone number and address; 11. Documents showing a change of managers from ALA to JSA

Item No. 12: CCTV video of the break-in at complainant's condo on 03 January 2019 at 8:00 PM and 04 January 2019 between 8:00 AM to 2:00 PM.⁸⁹

On 16 December 2022, Colliers filed a Manifestation (on the Directive of Producing Certain Files and Document Sought in MIP's Motion for Discovery of Evidence dated August 5, 2022).⁹⁰ Colliers claimed that the documents requested do not belong to Colliers and, thus, cannot be procured; and that it has no copies of the CCTV footage.⁹¹

On 17 December 2022, Colliers filed its Respondent's Memorandum dated 16 December 2022.⁹² Colliers reiterated the arguments raised in the Verified Comment dated 03 June 2022.⁹³

On the same day, MIP also filed his Memorandum.⁹⁴ He claimed that Colliers failed to obey the Commission's subpoena, EDS and JSA created false reports against and destroyed evidence, and Colliers' defenses should be disregarded for lack of witnesses, lack of evidence, and for being hearsay.⁹⁵

⁸⁹ *Id.* at 6.

⁹⁰ Manifestation (On the Directive of Producing Certain Files and Documents Sought In Complainant's Motion for Discovery of Evidence dated 05 August 2022), 16 December 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁹¹ *Id.*

⁹² Respondent's Memorandum, 17 December 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁹³ *Id.*

⁹⁴ Complainants Memorandum, 17 December 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁹⁵ *Id.*

On 20 December 2022, the CID issued an Order (Noting the Respondent's Memorandum and Manifestation (On the Directive of the Producing Certain Files and Documents Sought in the Motion for Discovery of Evidence dated August 5, 2022) and Complainants' Memorandum⁹⁶

On 13 January 2023, MIP submitted a "Manesfestation [sic] of Privacy Abuses."⁹⁷

In the submission, MIP stated that he was "filing a statement" against URCC, another URCC owner and member.⁹⁸ MIP manifested that URCC, through Colliers, asked his guest to pay an entrance fee for a Move-In Form before the guest could move in.⁹⁹ The form required the guest's ID, email address, phone number, and the names of the occupants of the property.¹⁰⁰

MIP argued that he does not agree with Collier's policy and that he did not give consent to collect their tenants' information or for Collier to use the forms to charge them money¹⁰¹ or Colliers only "use[d] these forms just to charge money."¹⁰² He also stated that "no consent was given to out block guests from our condo units, and "no rights regarding data privacy was given to us."¹⁰³ Finally, MIP asserted that "stopping guests from entering our personal [condos] to demand info, ID [and] payment" is in violation of the DPA.¹⁰⁴

MIP narrated that this caused him sleepless nights and extreme anxiety.¹⁰⁵ MIP prays that Colliers be liable for Sections 21, 32, and 33

⁹⁶ Order (Noting the Respondent's Memorandum and Manifestation (On the Directive of Producing Certain Files and Documents Sought in Complainant's Motion for Discovery of Evidence dated 05 August 2022) and Complainants Memorandum, 20 December 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁹⁷ Manifestation of Privacy Abuses, 13 January 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Manifestation of Privacy Abuses, 13 January 2022, at 1, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

¹⁰⁴ *Id.*

¹⁰⁵ Affidavit/Complaint, 19 September 2019, at 5, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2019).

of the DPA as well as “punitive damages, moral damages and as legal fees or as the Commission sees fit.”¹⁰⁶

Issue

- I. Whether Colliers has a legitimate interest in the processing of the personal information of URCC unit owners and their guests.
- II. Whether Colliers is liable under Section 25 (Unauthorized Processing of Personal Information), Section 32 (Unauthorized Disclosure), and Section 33 (Combination or Series of Acts) of the DPA.

Discussion

- I. Colliers’ processing of personal information had lawful basis under Section 12 (f) of the DPA.**

Colliers processed the personal information involved according to a lawful criterion provided under Section 12 (f) of the DPA. Section 12 (f) of the DPA allows for the processing of personal information when it is necessary for the legitimate interests pursued by the Personal Information Controller (PIC):

Section 12. *Criteria for Lawful Processing of Personal Information.*
The processing of personal information shall be permitted only if not otherwise prohibited by law, and when at least one of the following conditions exists:

...

(f) **The processing 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.¹⁰⁷

¹⁰⁶ *Id.*

¹⁰⁷ 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 § 12 (f) (2012).

In MIP's Complaint, he argues that Colliers violated the DPA when it: (1) collected the personal information of the condominium unit owners and their guests and (2) disclosed the CCTV footage of him during the URCC special meeting.¹⁰⁸

With regard to the collection of personal information of owners and guests, MIP alleged that:

Colliers has been collecting information of Owners guests, including my guest without my permission or consent. Requiring registration of Contracts [sic], asking for sensitive information such as ID's and passports photocopying them in the lobby.

...

The management policy demands guests photocopy of ID, with no actions safeguards their privacy.

...

Consent was not 'freely given' (SEC. 3(B) & there is no legitimate purpose showed for collecting ID photocopies by management when I emailed complaints & letter by LBC to the Respondents.¹⁰⁹

According to Colliers, the guests of the registered owner are required to register and provide proof of their identities for the security and safety of the building's occupants.¹¹⁰ It explained that the registered owner or lessee of the condominium is required to accomplish a "Move-In Form" that contains a list of the occupants of a unit.¹¹¹ It stated that it collects their personal information because only those named in the form will be allowed to enter or have access to the unit and the common areas of the condominium.¹¹²

Section 3 (g) of the DPA defines personal information:

¹⁰⁸ Affidavit/Complaint, 19 September 2019, at 2, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2019).

¹⁰⁹ *Id.* at 2-3.

¹¹⁰ Verified Comment, 03 June 2022, at 3, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

¹¹¹ *Id.* at 2.

¹¹² *Id.*

Section 3. *Definition of Terms.* Whenever used in this Act, the following terms shall have the respective meanings hereafter set forth:

...

(g) Personal information refers to 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.¹¹³

In this case, Colliers collected information such as the names of guests, condominium unit numbers, name of owner/lessor, contact numbers, name of tenant/lessee, email address, signature, the names of the occupants and their relationship to the owners or lessors.¹¹⁴ These are considered personal information under Section 3(g) of the DPA.

Further, CCTV footage that captures visual images used to identify or ascertain the identity of a person, is also classified as personal information under Section 3 (g).

In this case, Colliers disclosed two CCTV recordings. One CCTV recording captured footage of MIP walking in the condominium premises while grabbing his suitcase, and the other captured him and another owner walking into the PMO. These are both considered personal.

Section 3 (j) of the DPA defines processing:

Section 3. *Definition of Terms.* Whenever used in this Act, the following terms shall have the respective meanings hereafter set forth:

...

(j) *Processing* refers to any operation or any set of operations performed upon personal information including, but not limited to, the **collection**, recording, organization, storage,

¹¹³ Data Privacy Act of 2012, § 3 (g).
¹¹⁴ Verified Comment, 03 June 2022, Annex 3, in MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

updating or modification, retrieval, consultation, use,
consolidation, blocking, erasure or destruction of data.¹¹⁵

Prior to occupying a condominium unit, Colliers stated that it collects the necessary personal information from its owners and tenants as outlined in the Move-In Forms.¹¹⁶ It also regularly collects the IDs of the owners or guests to verify the identities of individuals listed in the Move-In Forms.¹¹⁷ Under Section 3 (j) of the DPA, the act of collecting and verifying the names of the condominium unit owners, their tenants, and their guests is considered processing. Likewise, the acts of and their guests and the recording and disclosing of the CCTV footage are considered processing. The CCTV footage was used by Colliers to directly ascertain MIP's identity and to issue the Memorandum dated 06 July 2018.¹¹⁸

Processing based on legitimate interest requires the fulfillment of the following conditions: (1) the legitimate interest is established; (2) the means to fulfill the legitimate interest is both necessary and lawful; and (3) the interest is legitimate and lawful, and it does not override fundamental rights and freedoms of data subjects.¹¹⁹

A. Colliers established its legitimate interest in processing the personal information of MIP and of the condominium unit owners and their guests.

The first requisite for processing based on Section 12(f) of the DPA requires that legitimate interest is established.¹²⁰ This focuses on what the PIC seeks to accomplish with the specific processing activity.¹²¹ To determine whether the legitimate interest has been established, the PIC must comply with the general privacy principles of (1) legitimate purpose and (2) transparency.¹²²

Section 11 of the DPA discusses legitimate purpose as follows:

¹¹⁵ Data Privacy Act of 2012, § 3 (j).

¹¹⁶ Verified Comment, 03 June 2022, at 2, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Data Privacy Act of 2012, § 12 (f).

¹²⁰ *Id.*

¹²¹ See National Privacy Commission, Guidelines on Legitimate Interest, NPC Circular No. 2023-07 [NPC Circ. No. 2023-07], § 5 (13 December 2023).

¹²² See *Id.*

Section 11. *General Data Privacy Principles*. The processing of personal information shall be allowed, subject to compliance with the requirements of this Act and other laws allowing disclosure of information to the public and adherence to the principles of transparency, **legitimate purpose** and proportionality.

Personal information must be:

(a) Collected for specified and legitimate purposes determined and declared before, or as soon as reasonably practicable after collection, and later processed in a way compatible with such declared, specified and legitimate purposes only;

...

(e) **Retained only for as long as necessary for the fulfillment of the purposes for which the data was obtained or for the establishment, exercise or defense of legal claims, or for legitimate business purposes, or as provided by law[.]**¹²³

Further, Section 18 of the Implementing Rules and Regulations of the DPA (IRR) provides:

Section 18. *Principles of Transparency, Legitimate Purpose and Proportionality*. The processing of personal data shall be allowed subject to adherence to the principles of transparency, legitimate purpose, and proportionality.

...

b. Legitimate purpose. **The processing of information shall be compatible with a declared and specified purpose which must not be contrary to law, morals, or public policy.**¹²⁴

Hence, the legitimate purpose principle requires that: (1) the purpose of processing must be specified; and (2) that purpose must not be contrary to law, morals, or public policy.¹²⁵

¹²³ Data Privacy Act of 2012, §§ 11 (a) & (e). Emphasis supplied.

¹²⁴ National Privacy Commission, Rules and Regulations Implementing the Data Privacy Act of 2012, Republic Act No. 10173, rule IV, § 18 (b) (2016). Emphasis supplied.

¹²⁵ *Id.*

The first element of legitimate purpose requires that there should be a specific purpose, such that the purpose of processing is clearly defined and not vague or overbroad.¹²⁶ While this does not require an exhaustive enumeration of each and every purpose that may possibly apply to that processing activity, it must be specific enough for the data subject to understand what is sought to be achieved by that processing.¹²⁷

The second element of legitimate purpose requires the purpose to be within the limitations of the law, which should be understood to include the entire body of laws, rules, and regulations.¹²⁸ Additionally, the purpose of processing should not go against prevailing morals or run counter to public policy.¹²⁹

In this case, Colliers specified that its purpose for processing the information of the owners, and their guests was to update its records and to maintain the security of its premises.

The Move-In Form attached by Colliers states that the purpose of collecting information was to update the records of the members:

This is for member update purposes only. The information contained herein is considered confidential and will not be divulged to a third party without your prior consent. Please have this form returned to the Administration Office after being filled-up.¹³⁰

Further, Colliers stated that the names of the owners and their guests were collected to verify the identity of people who enter the premises of the condominium property.¹³¹ The Commission previously held that maintaining the security of the premises and tenants of a building is a legitimate interest.¹³² Maintaining logbooks that contain

¹²⁶ See NPC Circ. No. 2023-07, § 5.

¹²⁷ Spouses MCD and JJD v. Victorias Milling Company, et al., NPC 19-758 and 19-1846, 30 June 2023, at 21, *available at* https://privacy.gov.ph/wp-content/uploads/2024/05/NPC-19-758-to-NPC-19-1846-2023.06.30-MCD-_JJD-v-Victorias-Milling-Company-et-al-Decision-FinalP.pdf (last accessed 31 May 2024).

¹²⁸ See NPC Circ. No. 2023-07, § 5.

¹²⁹ See *Id.*

¹³⁰ Verified Comment, 03 June 2022, Annex 2, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022). Emphasis supplied.

¹³¹ *Id.* at 2.

¹³² MNLC, INC. v. PXXX Corporation, RCM, and AD, NPC Case No. 19-528, 23 February 2021, at 22, *available at* https://privacy.gov.ph/wp-content/uploads/2023/05/Decision_NPC-19-528-MNLC-v.-PXXX-Corporation.pdf (last accessed 31 May 2024).

the name of the guest, the date of visit, and the name of the tenant is considered a common security practice in public and private buildings. Such acts of recording personal information of guests may be considered necessary for the purposes of monitoring all individuals who enter URCC's condominium property.

Hence, the collection of personal information by Colliers through the Move-In Form was for a specified purpose and it was not contrary to law, morals, or public policy.

With regard to the CCTV footage, Colliers specified that its purpose for processing MIP's personal information was to facilitate the investigation conducted on the basis of his allegations:

[T]he view of the CCTV footage was for a **legitimate purpose** and the same was **necessary** as it was done on account of an investigation conducted by URCC to determine whether the accusation of the Complainant against herein Respondent was true or not.¹³³

To recall, Colliers stated that MIP was responsible for sending a mass email accusing Colliers employees and staff members of "not doing their job."¹³⁴ In his email, MIP accused Colliers' staff members' of "poor management and performance."¹³⁵ Thus, a special meeting was held with the URCC property owners and Colliers staff to address MIP's allegation of "misconduct" of Colliers staff members.¹³⁶ Colliers explained that there was an investigation conducted by a member of URCC's BOD concerning violators of the rules of URCC and that the investigation required the review of the CCTV to "catch these culprits in action."¹³⁷

Hence, the processing through disclosure of the CCTV footage is for a specified purpose, and it was not contrary to law, morals, or public policy.

¹³³ Verified Comment, 03 June 2022, at 3, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

¹³⁴ Letter *from* Russel S. Pernites *to* MIP, 19 February 2019, at 2, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2019).

¹³⁵ *Id.*

¹³⁶ Verified Comment, 03 June 2022, at 3, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

¹³⁷ *Id.*

The general privacy principle of transparency requires that the PIC's interest is communicated to the data subject.¹³⁸ This principle requires that a PIC should inform the data subject of the nature, purpose, and extent of the processing, using clear and plain language that is easy to understand.¹³⁹

Section 18 of the Implementing Rules and Regulations of the DPA (IRR) elaborates on transparency:

Section 18. *Principles of Transparency, Legitimate Purpose and Proportionality.* The processing of personal data shall be allowed subject to adherence to the principles of transparency, legitimate purpose, and proportionality.

a. **Transparency. The data subject must be aware of the nature, purpose, and extent of the processing of his or her personal data, including the risks and safeguards involved, the identity of personal information controller, his or her rights as a data subject, and how these can be exercised. Any information and communication relating to the processing of personal data should be easy to access and understand, using clear and plain language.**¹⁴⁰

As previously discussed, Colliers clearly and adequately communicated to the homeowners its claimed interest in processing the homeowner's personal information when it declared that the Move-In Dorm was for "member update purposes only."¹⁴¹ This includes the registration of lessees and visitors, and their respective contact details.

As for the disclosure of the CCTV footage showing MIP, Colliers explained in its Verified Comment that it informed MIP and the other homeowners that the special meeting was specifically called to address the allegations of misconduct and poor work performance in MIP's email.¹⁴²

¹³⁸ Data Privacy Act of 2012, § 11 (a).

¹³⁹ Rules and Regulations Implementing the Data Privacy Act of 2012, rule IV, § 18 (a).

¹⁴⁰ *Id.* Emphasis supplied.

¹⁴¹ Verified Comment, 03 June 2022, Annex 2, in MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

¹⁴² *Id.* Annex 4.

Since Colliers communicated its specific purpose for processing the personal information to MIP and to the URCC unit owners and their guests, and such purpose is not contrary to law, morals, or public policy, it established its legitimate interest.

Therefore, Colliers established its legitimate interest and satisfied the first requisite based on Section 12(f) of the DPA.

B. The means that Colliers used to fulfill the legitimate interest were both necessary and lawful.

The second requisite of processing based on Section 12 (f) of the DPA is that the means to fulfill the legitimate interest is both necessary and lawful.¹⁴³ For this requisite, the PIC must show that the means or the specific processing activity undertaken is (1) necessary and (2) lawful.¹⁴⁴ The PIC must evaluate how it intends to accomplish the legitimate interest it has previously established.

The Commission previously held that the qualifier “necessary” refer to the general privacy principle of proportionality.¹⁴⁵ Following this principle, the processing must be adequate, relevant, suitable, and necessary, such that it is not excessive in relation to the declared and specified purpose.¹⁴⁶

Section 11 of the DPA provides:

Section 11. *General Data Privacy Principles.* The processing of personal information shall be allowed, subject to compliance with the requirements of this Act and other laws allowing disclosure of information to the public and adherence to the principles of transparency, legitimate purpose and **proportionality**.

Personal information must, be:

¹⁴³ Spouses MCD and JJD v. Victorias Milling Company, et al., NPC 19-758 and 19-1846, 30 June 2023, at 22, *available at* https://privacy.gov.ph/wp-content/uploads/2024/05/NPC-19-758-to-NPC-19-1846-2023.06.30-MCD-_JJD-v-Victorias-Milling-Company-et-al-Decision-FinalP.pdf (last accessed 31 May 2024).

¹⁴⁴ Data Privacy Act of 2012, § 11 (b), (c), & (d).

¹⁴⁵ EA and TA v. EJ, EE, and HC, NPC 17-018, 15 July 2019, at 10, *available at* <https://privacy.gov.ph/wp-content/uploads/2023/05/NPC-17-018-EA-and-TA-v-EJ-Decision-2019.07.15-.pdf>, (last accessed 31 May 2024).

¹⁴⁶ Data Privacy Act of 2012, §§ 11 (c) & (d).

...

(c) Accurate, **relevant and, where necessary for purposes for which it is to be used the processing of personal information**, kept up to date; inaccurate or incomplete data must be rectified, supplemented, destroyed or their further processing restricted;

(d) **Adequate and not excessive in relation to the purposes for which they are collected and processed**[.]¹⁴⁷

Section 18 of the Implementing Rules and Regulations of the DPA (IRR) elaborates on proportionality:

Section 18. *Principles of Transparency, Legitimate Purpose and Proportionality.* The processing of personal data shall be allowed subject to adherence to the principles of transparency, legitimate purpose, and **proportionality**.

...

c. Proportionality. The processing of information shall be **adequate, relevant, suitable, necessary, and not excessive in relation to a declared and specified purpose**. Personal data shall be processed only if the purpose of the processing could not reasonably be fulfilled by other means.¹⁴⁸

Given this, the processing is proportional when the (1) processing is adequate, relevant, and necessary to the declared and specified purpose; and (2) means by which processing is performed is the least intrusive means available.¹⁴⁹

In this case, the collection of the personal information of the owners and their guests was relevant and necessary to fulfill URCC's directive to maintain safety on the premises of the property managed by Colliers.

As previously established, the BOD of URCC required and instructed Colliers to collect the personal information of persons entering the

¹⁴⁷ *Id.*

¹⁴⁸ Rules and Regulations Implementing the Data Privacy Act of 2012, rule IV, § 18 (c). Emphasis supplied.

¹⁴⁹ See NPC Circ. No. 2023-07, § 6; Spouses MCD and JJD v. Victorias Milling Company, et al., NPC 19-758 and 19-1846, 30 June 2023, at 24, *available at* https://privacy.gov.ph/wp-content/uploads/2024/05/NPC-19-758-to-NPC-19-1846-2023.06.30-MCD-_JJD-v-Victorias-Milling-Company-et-al-Decision-FinalIP.pdf (last accessed 31 May 2024).

condominium to “ensure the safety and security of all the unit owners.”¹⁵⁰ Colliers argued that the condominium is not a public property, and the common areas of the property remain to be privately owned.¹⁵¹

The processing was also not excessive since Colliers limited the collected information to names, the condominium unit number concerned, contact numbers, email address, signature, and relationship to the owners or lessors. Individuals entering the premises were requested to show proof of their identity to ensure that only those named in the Move-In Form would be able to access the facilities and common areas. After being filled up, the Move-In Form was then returned to the Administration Office.¹⁵² Colliers emphasized that this was also to ensure the safety of the unit owners in the condominium, and that it was not disclosed to other parties. Further, MIP did not establish or even allege that Colliers processed the owners’ and guests’ personal information further in order to confirm it matches the name provided in the Move-In documents submitted by the unit owners. Therefore, Colliers adopted the least intrusive means possible to accomplish its legitimate interest.

As for the disclosure of the CCTV footage showing MIP, Colliers disclosed the CCTV footage during the special meeting held for the purpose of addressing the concerns of the homeowners and the staff members of Colliers.¹⁵³

In the letter to MIP, Colliers stated that the CCTV footage was shown upon the persuasion of a homeowner who wanted to “bring out the truth of the matter”:

One homeowner asked for the CCTV footage to be shown, in order to clarify on who between the two of you was telling the truth. It was only then that Colliers showed it, not to discredit you personally, but to bring out the truth of the matter.¹⁵⁴

¹⁵⁰ Verified Comment, 03 June 2022, at 3, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2019).

¹⁵¹ *Id.*

¹⁵² *Id.* Annex 3.

¹⁵³ Affidavit/Complaint, 19 September 2019, at 2, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2019).

¹⁵⁴ Verified Comment, 03 June 2022, at 4, *in* MIP v. Colliers International Philippines, NPC 19-1411 (NPC 2022).

In that instance, Colliers disclosed the footage to all those present at the special meeting because it was necessary and relevant to the purpose of verifying the CCTV footage. During that time, Colliers' act of verifying the CCTV footage during the special meeting was necessary to determine the accuracy of the claims made by MIP in his email.¹⁵⁵ Further, the showing of the CCTV footage was the least intrusive, and most suitable and prompt thing to do to belie the accusations made by MIP himself.

The second element of legitimate purpose requires the purpose to be within the limitations of the law, which should be understood to include the entire body of laws, rules, and regulations.¹⁵⁶ Additionally, the purpose of processing should not go against prevailing morals or run counter to public policy.¹⁵⁷

Section 11 of the DPA provides:

Section 11. *General Data Privacy Principles.* The processing of personal information shall be allowed, subject to compliance with the requirements of this Act and other laws allowing disclosure of information to the public and adherence to the principles of transparency, legitimate purpose and proportionality.

Personal information must, be:

...

(b) Processed fairly and **lawfully**[.]¹⁵⁸

Here, as previously established the collection of the personal information of the unit owners, tenants, and guests through the Move-In Form and upon entering the premises, was conducted lawfully and without any coercion or pressure from Colliers. Colliers' act of monitoring access and entry to the property following the instructions of the URCC BOD falls within its duty as property manager.

¹⁵⁵ *Id.*

¹⁵⁶ See NPC Circ. No. 2023-07, § 4.

¹⁵⁷ See *Id.*

¹⁵⁸ Data Privacy Act of 2012, § 11 (b). Emphasis supplied.

As for Colliers' disclosure of the CCTV footage, it was intended to validate the truthfulness of MIP's claims involved showing the CCTV footage. This objective of determining truthfulness did not violate any existing law or regulation, company policy, or contractual agreement between URCC as the company and MIP as a property owner.

Therefore, the means used by Colliers to fulfil its legitimate interest were necessary and lawful.

C. Colliers' interest is legitimate and lawful, and it does not override fundamental rights and freedoms of the data subject.

The third requisite for processing based on legitimate interest under Section 12 (f) of the DPA is that the interest is legitimate and lawful, and it does not override fundamental rights and freedoms of data subjects.¹⁵⁹ This requisite focuses on the effect or impact of accomplishing the legitimate interest such that it does not override the fundamental rights and freedoms of the data subjects.¹⁶⁰

A determination of the effect of accomplishing legitimate interest requires an analysis of the totality of the three (3) requisites.¹⁶¹ Given that the legitimate interest of the PIC has been established, and the PIC's means to fulfill that legitimate interest is both necessary and lawful, it must now be determined whether the processing undertaken does not override Complainants' fundamental rights and freedoms.¹⁶²

In determining the impact of the PIC's processing based on legitimate interest, aside from the categories of personal information that are processed, the Commission considers the general privacy principle of

¹⁵⁹ See NPC Circ. No. 2023-07, §§ 4 & 7.

¹⁶⁰ *Id.* § 7.

¹⁶¹ *Spouses MCD and JJD v. Victorias Milling Company, et al.*, NPC 19-758 and 19-1846, 30 June 2023, at 27, available at https://privacy.gov.ph/wp-content/uploads/2024/05/NPC-19-758-to-NPC-19-1846-2023.06.30-MCD-_JJD-v-Victorias-Milling-Company-et-al-Decision-FinalP.pdf (last accessed 31 May 2024).

¹⁶² See NPC Circ. No. 2023-07, §§ 4 & 7.

fairness and the reasonable expectation of the data subjects regarding the processing of their personal information.¹⁶³

Section 11 (b) of the DPA states that the personal information must be processed fairly:

Section 11. *General Data Privacy Principles.* The processing of personal information shall be allowed, subject to compliance with the requirements of this Act and other laws allowing disclosure of information to the public and adherence to the principles of transparency, legitimate purpose and proportionality.

Personal information must, be:

...

(b) Processed **fairly** and lawfully[.]¹⁶⁴

Section 19 of the Implementing Rules and Regulations of the DPA (IRR) elaborates on fairness:

Section 19. *General principles in collection, processing and retention.* The processing of personal data shall adhere to the following general principles in the collection, processing, and retention of personal data:

...

b. Personal data shall be processed **fairly** and lawfully.

1. Processing shall uphold the rights of the data subject, including the right to refuse, withdraw consent, or object. It shall likewise be transparent, and allow the data subject sufficient information to know the nature and extent of processing.
2. Information provided to a data subject must always be in clear and plain language to ensure that they are easy to understand and access.
3. **Processing must be in a manner compatible with declared, specified, and legitimate purpose.**
4. **Processed personal data should be adequate, relevant, and limited to what is necessary in relation to the purposes for which they are processed.**

¹⁶³ Data Privacy Act of 2012, § 11 (b); See Rules and Regulations Implementing the Data Privacy Act of 2012, rule IV, § 19 (b).

¹⁶⁴ Data Privacy Act of 2012, § 11 (b). Emphasis supplied

5. Processing shall be undertaken in a manner that ensures appropriate privacy and security safeguards.¹⁶⁵

To reiterate, Colliers's act of collecting the names of the owners and guests was made for the purpose of verifying whether persons entering and staying at the condominium property are occupants, tenants, or guests. This stems from its duty as property manager to implement the instructions of the BOD to monitor access and entry for the safety and security of the unit owners. Since it is a standard security practice when individuals enter private buildings and property, the processing does not exceed the data subjects' reasonable expectation of privacy. Moreover, the collected information enables Colliers to identify unauthorized individuals and enforce rules and regulations effectively. Maintaining a record of who enters the property is necessary to maintain security and safety, and for proper management of the condominium and its facilities.

Further, the disclosure of the CCTV footage during the meeting was done to aid the ongoing administrative investigation being conducted by URCC, which stemmed from the accusations made by MIP himself against the staff members of Colliers. It was aligned with the legitimate business objective sought by both Colliers staff and property owners, which was to verify the accuracy of MIP's claims against them.

As such, the disclosure did not contravene the principle of fairness because it was shown to the homeowners to whom the mass email was sent and who themselves requested for it to be shown.

The interest of Colliers in protecting its managed property and in addressing the accusations made by MIP about its employees is legitimate and does not override the fundamental freedoms of the data subjects, including MIP. This legitimate interest does not, in any way, disregard MIP's fundamental rights and freedoms of as a data subject.

Given the foregoing, Colliers was able to clearly establish its legitimate interest in processing by collecting the personal information of tenants and visitors, and by disclosing the CCTV

¹⁶⁵ Rules and Regulations Implementing the Data Privacy Act of 2012, rule IV, § 19 (b). Emphasis supplied.

footage showing MIP. Both acts of processing were lawfully conducted and necessary, and neither overrode the fundamental rights and freedoms of the data subjects.

In sum, for processing based on Section 12 (f) of the DPA to apply, the PIC must comply with three (3) requisites. The first requisite focuses on what the PIC is accomplishing and the legitimate purpose that has been communicated to the data subject. The second requisite refers to how the PIC is accomplishing the legitimate interest, such as the means chosen or the specific processing activity undertaken, which should be necessary and lawful. Finally, the third requisite considers the effect of accomplishing the legitimate interest, such that it does not override the fundamental rights and freedoms of the data subjects.

In this case, Colliers complied with all three requisites for processing based on legitimate interest. It clearly established the legitimate interest in collecting personal information through the Move-In Forms and in disclosing the CCTV footage showing MIP. The processing was lawfully conducted and were necessary to maintain security of the building and to address the claims made by MIP. Further, its acts did not go beyond what could be reasonably expected by the data subjects, including MIP, when they entered and utilized the premises of the URCC condominium.

Given that all three requisites for processing based on legitimate interest under Section 12 (f) are present, Colliers processed personal information with lawful basis.

II. Colliers did not violate Sections 25 and 32 of the DPA

Colliers is neither liable for Section 25 of the DPA on Unauthorized Processing of Personal and Sensitive Personal Information nor Section 32 of the DPA on Unauthorized Disclosure.

A. Colliers is not liable under Section 25 of the DPA (Unauthorized Processing).

Section 25 of the DPA on Unauthorized Processing of Personal and Sensitive Personal Information provides:

Section 25. *Unauthorized Processing of Personal Information and Sensitive Personal Information.* (a) The unauthorized processing of personal information 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 process personal information without the consent of the data subject, or without being authorized under this Act or any existing law.

(b) The unauthorized processing of personal sensitive information shall be penalized by imprisonment ranging from three (3) years to six (6) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than Four million pesos (Php4,000,000.00) shall be imposed on persons who process personal information without the consent of the data subject, or without being authorized under this Act or any existing law.¹⁶⁶

Under Section 25, a PIC or PIP may be held liable for Unauthorized Processing of Personal Information and Sensitive Personal Information if it processes personal data without consent or lawful basis under the DPA or any applicable law. The elements for Unauthorized Processing are:

1. The perpetrator processed the information of the data subject;
2. The information processed was personal information or sensitive personal information;
3. The processing was done without the consent of the data subject, or without being authorized under the DPA or any existing law.¹⁶⁷

In this case, Colliers processed the personal information of the owners and guests of the condominium property when it asked for proof of their identity. Colliers also processed MIP's personal information when it recorded and disclosed the CCTV footage of him during the special meeting. Thus, the first and second elements are present.

¹⁶⁶ Data Privacy Act of 2012, § 25.

¹⁶⁷ VVC v. CJB, NPC 19-134, 10 December 2021, at 12, *available at* <https://privacy.gov.ph/wp-content/uploads/2023/05/NPC-19-134-VVC-v.-CJB-Decision-2021.12.10.pdf> (last accessed 31 May 2024).

As previously established, however, the processing was authorized under the DPA. Colliers' act of processing the personal information of its owners, including MIP, and their guests was made pursuant to a legitimate interest under Section 12 (f). As such, the third requisite of Section 25 of the DPA is absent.

B. Colliers is not liable under Section 32 of the DPA (Unauthorized Disclosure).

Section 32 of the DPA on Unauthorized Disclosure provides:

Section. 32. *Unauthorized Disclosure.* (a) Any personal information controller or personal information processor or any of its officials, employees or agents, who discloses to a third party personal information not covered by the immediately preceding section without the consent of the data subject, shall be subject to 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 One million pesos (Php1,000,000.00).

(b) Any personal information controller or personal information processor or any of its officials, employees or agents, who discloses to a third party sensitive personal information not covered by the immediately preceding section without the consent of the data subject, shall be subject to imprisonment ranging from three (3) years to five (5) 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).¹⁶⁸

Section 32 makes a reference to the "immediately preceding section" or Section 31 on Malicious Disclosure, which reads:

Section 31. *Malicious Disclosure.* – Any personal information controller or personal information processor or any of its officials, employees or agents, who, with malice or in bad faith, discloses unwarranted or false information relative to any personal information or personal sensitive information obtained by him or her, shall be subject to imprisonment ranging from one (1) year and six (6) months to five (5) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than One million pesos (Php1,000,000.00).¹⁶⁹

¹⁶⁸ Data Privacy Act of 2012, § 32.

¹⁶⁹ *Id.* § 31.

The following requisites must concur for there to be a finding of malicious disclosure:

1. The perpetrator is a personal information controller or personal information processor or any of its officials, employees, or agents;
2. The perpetrator disclosed personal or sensitive personal information;
3. The disclosure was with malice or in bad faith; and
4. The disclosed information relates to unwarranted or false information.¹⁷⁰

A PIC or PIP may be held liable under Section 31 for Malicious Disclosure if it discloses unwarranted or false personal information or sensitive personal information with malice or in bad faith.¹⁷¹ The absence of either the third or fourth requisite, or both requisites distinguishes Malicious Disclosure and Unauthorized Disclosure.

In this case, the disclosure does not fall under Malicious Disclosure since the third and fourth requisites are absent. Since both requisites are absent, the disclosure falls under Section 32 on Unauthorized Disclosure.¹⁷²

There was no showing that the collection of personal information of owners and tenants through the Move-In Form and the disclosure of the CCTV footage was malicious or done in bad faith. As previously discussed, the collection of personal information was to maintain security of the premises. The disclosure was made during a special meeting in response to allegations raised by MIP himself, and the footage was directly relevant to clarifying the facts of the matter. Moreover, the information was not unwarranted or false as the CCTV footage recorded events that took place without fabrication. Thus, the disclosure was not malicious nor done in bad faith and the information disclosed is not unwarranted or false information.

¹⁷⁰ *RLA v. PLDT Enterprise*, NPC 18-010, 10 December 2021, available at https://privacy.gov.ph/wp-content/uploads/2023/05/02-NPC_18_010_RLA_v_PLDT_Enterprise_Resolution_w_Dissenting_Opinion.pdf (last accessed 31 May 2024).

¹⁷¹ Data Privacy Act of 2012, § 31.

¹⁷² *MVC v. DSL*, *RRB v. DSL*, *NMB v. DSL*, *RMP v. DSL*, *NDL v. DSL*, and *MBN v. DSL*, NPC 21-010, NPC 21-011, NPC 21-012, NPC 21-013, NPC 21-014, and NPC 21-015, 03 February 2022, at 11, available at <https://privacy.gov.ph/wp-content/uploads/2024/06/NPC-21-010-to-NPC-21-015-2022.02.03-Decision-FinalP.pdf> (last accessed 31 May 2024).

Given that the disclosure was not malicious nor done in bad faith and the information disclosed is not unwarranted or false information, the disclosure does not fall under Section 31 on Malicious Disclosure.

C. Processing without a lawful basis is a common requisite of Section 25 and Section 32 of the DPA.

As previously established, there was a lawful basis for processing the CCTV footage under Section 12 (f) of the DPA.

Processing personal information without a lawful basis is a common requisite of Unauthorized Processing under Section 25 and Unauthorized Disclosure under Section 32 of the DPA.

In determining whether Unauthorized Processing occurred, the following requisites should be present:

1. The perpetrator processed the information of the data subject;
2. The information processed was personal information or sensitive personal information; and
3. **The processing was done without the consent of the data subject, or without being authorized under the DPA or any existing law.**¹⁷³

Since the processing had lawful basis under Section 12 (f) of the DPA and was thus authorized under the DPA, Colliers is not liable under Section 25 of the DPA on Unauthorized Processing of Personal or Sensitive Personal Information for failure to fulfill the third requisite

In determining whether Unauthorized Disclosure occurred, the following requisites should be present:

1. The perpetrator is a personal information controller or personal information processor;
2. The perpetrator disclosed information;
3. The information relates to personal or sensitive personal information;

¹⁷³ Data Privacy Act of 2012, § 25.

4. The perpetrator disclosed the personal or sensitive personal information to a third party;
5. **The disclosure was without any of the lawful basis for processing, consent or otherwise, under Sections 12 and 13 of the DPA; and**
6. The disclosure is neither malicious nor done in bad faith or the information disclosed is not unwarranted or false information.¹⁷⁴

Since there is lawful basis for Colliers' act of disclosure, as previously established, the fifth requisite is absent. Hence, Colliers is not liable under Section 32 of the DPA on Unauthorized Disclosure.

To summarize, the third requisite of Section 25 of the DPA (Unauthorized Processing) requires that the processing be without the consent of the data subject or without authority under the DPA or any existing law.¹⁷⁵ Meanwhile, the fifth requisite of Section 32 of the DPA (Unauthorized Disclosure) provides that the processing of the information was without any of the lawful basis for processing, consent or otherwise, under Sections 12 (f) of the DPA.¹⁷⁶ Since there is lawful basis for processing, then the third requisite of Section 25 of the DPA and the fifth requisite of Section 32 of the DPA are not present.

In this case, Colliers complied with all three requisites for processing based on legitimate interest. It clearly established the legitimate interest in processing the personal information of the owners and their guests and the disclosure of the CCTV footage during the special meeting. Collecting the personal information of both owners and guests pursuant to its objective of maintaining security on its premises is a legitimate interest. Meanwhile, the disclosure of the footage was lawfully conducted and was necessary to verify the accuracy of the claims made by MIP.

Given the foregoing, the Commission cannot find Colliers, RDR, EDS, JSA, and ALA liable for violating Section 25 (Unauthorized Processing) and Section 32 (Unauthorized Disclosure) of the DPA.

¹⁷⁴ *Id.* § 32.

¹⁷⁵ *ECV v. CVF*, NPC 18-074, 17 March 2024, at 10, *available at* https://privacy.gov.ph/wp-content/uploads/2023/05/NPC-18-074_ECV-v.-CVF_Decision_17-March-2022.pdf (last accessed 31 May 2024).

¹⁷⁶ Data Privacy Act of 2012, § 32.

Consequently, they are also not liable under Section 33 (Combination or Series of Acts) of the DPA.

WHEREFORE, premises considered, this Commission resolves that the instant Complaint filed by MIP against Colliers International Philippines (Colliers) represented by RDR, EDS, JSA, and ALA is hereby **DISMISSED** for lack of merit.

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

SO ORDERED.

City of Pasay, Philippines.
12 March 2024.

Sgd.
LEANDRO ANGELO Y. AGUIRRE
Deputy Privacy Commissioner

WE CONCUR:

Sgd.
JOHN HENRY D. NAGA
Privacy Commissioner

Sgd.
NERISSA N. DE JESUS
Deputy Privacy Commissioner

Copy furnished:

MIP
Complainant

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