



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

**PRIVACY POLICY OFFICE
ADVISORY OPINION NO. 2017-49**

29 August 2017



**Re: TEACHERS' RIGHT TO SEARCH A MINOR STUDENT'S
CELLULAR PHONE**

Dear Sir/Madame,

This refers to your query which was received by the National Privacy Commission (NPC) on 26 July 2017. Specifically, you asked if a teacher can legally search through a minor student's cellular phone without his consent.

Having considered limited information provided in your query, this Commission deems it necessary to take up the following key points.

Bill of Rights

As enshrined in our bill of rights, the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable.¹ Likewise, the privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law.²

In House Bill No. 2870 and Senate Bill No. 911 on the Magna Carta for Students, the above rights are likewise recognized. Specifically, the bills provide the following guidelines on searches and seizures³, to wit:

“Right Against Unreasonable Searches and Seizures. – Every student shall be free from any form of unreasonable search and seizure. Except for the following instances, no search or seizure shall be deemed valid:

- a. Searches made at the point of ingress and egress by authorized personnel of the school;

¹ 1987 Constitution, Article III, §2

² Id., §3(1)

³ HB No. 2870, §22 and SB No. 911, §19

- b. Searches and seizures of illegal article or articles falling in the plain view of duly authorized personnel;
- c. Searches and seizures of articles that are illegal, discovered inadvertently by duly authorized personnel;
- d. Searches made when the student is about to commit, is committing or has just committed a crime or a serious infraction of the school's rules and regulations; and
- e. Searches made with a valid search warrant."

Prohibition on the use of cellular phones during class hours

We understand that the Department of Education (DepEd) has issued Department Order (DO) No. 83, s. 2003 - Reiteration to DECS Orders Nos. 70, s. 1999 and 26, s. 2000 - Prohibiting Students of Elementary and Secondary Schools from Using Cellular Phones and Pagers During Class Hours.

The rationale is that "text messaging causes disturbance to classes and are being used to cheat during examinations",⁴ and that "cell phones have been proliferated with lewd and obscene picture messages."⁵

The latest DO did not specify what will happen if a student is caught using a cellular phone during class hours. We presume that the cellular phone will be confiscated and will be returned upon dismissal.

If the scenario contemplated in your inquiry pertains to this, we believe that the teacher may have the right to seize the cellphone as this is a violation of DepEd rules pursuant to the mandate to immediately stop or at the very least, closely monitor and regulate the use of cellphones. But this does not automatically provide the teacher with the authority to search through the contents of the cellphone.

Lawful processing of personal data

Note that under the Data Privacy Act of 2012, lawful processing of personal information is permitted under the following instances:

- The data subject has given his or her consent;
- The processing is necessary and is related to the fulfillment of a contract with owner of the information;
- The processing is necessary for compliance with a legal obligation;
- The processing is necessary to protect vitally important interests of the data subject, including life and health;
- The processing is necessary in order to respond to national emergency; and
- The processing is necessary for the purposes of the legitimate interests of the PIC, except where such interests are overridden by fundamental rights and freedoms of the data subject which require protection under the Philippine Constitution.

⁴ DECS Orders Nos. 70, s. 1999, Item 1

⁵ DepEd Department Order No. 83, s. 2003, Item 1

As to sensitive personal information, the processing thereof is prohibited, except for any of the following cases under Section 13 of the DPA:

- The data subject has given his or her consent, specific to the purpose to the processing;
- The processing is provided for by existing laws and regulations;
- The processing is necessary to protect the life and health of the data subject or another person, and the data subject is not legally or physically able to express his or her consent prior to the processing;
- The processing is necessary to achieve lawful and noncommercial objectives of public organizations and associations;
- The processing is necessary for the purpose of medical treatment; and
- The processing concerns personal information necessary for the protection of lawful rights and interest of natural or legal person in court proceedings, or the establishment, exercise, or defense of legal claims, or when provided to government or public authority pursuant to a constitutional or statutory mandate.

In some of the above instances, the teacher may search through a minor student's cellphone in order to protect vitally important interests of the student, including his life and health or probably to respond to national emergency. We believe that the consent criteria is not applicable in this case as a minor cannot validly provide the consent as defined under the DPA.

Hence, any search through a minor student's cellular phone without the necessary warrant or any other justification under a law or regulation allowing such act, is unlawful, and may be construed as unauthorized processing punishable under Section 25 of the DPA.

For your reference.

Very truly yours,

RAYMUND ENRIQUEZ LIBORO
Privacy Commission and Chairman