



Republic of the Philippines  
NATIONAL PRIVACY COMMISSION

**PRIVACY POLICY OFFICE  
ADVISORY OPINION NO. 2020-049<sup>1</sup>**

17 November 2020



**Re: RELEASE OF OVERSEAS FILIPINO WORKER  
INFORMATION TO FAMILY MEMBERS**

Dear 

We write in response to your request for an advisory opinion seeking guidance on an issue involving a request addressed to the Philippine Overseas Employment Agency (POEA) from the wife of an Overseas Filipino Worker (OFW) for the release of her spouse's information/records to her.

The request arose from the wife's allegation that her spouse stopped all communications with her and is no longer providing her and their children with financial support for more than five (5) months.

POEA denied the request and directed her to ask the Public Attorney's Office (PAO) for assistance on the matter, claiming that under POEA Advisory No. 08 s. 2019, an order from a competent court or government agency is a pre-requisite for the issuance of OFW information to persons other than the OFW concerned, and claiming further that a letter request from a PAO lawyer would be sufficient basis for the release of the subject OFW information.

On the other hand, you opined that a court order or request from a government agency is not necessary in this case because the processing of sensitive personal information (SPI) 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 is allowed under Section 13 (f) of the Data Privacy Act of 2012<sup>2</sup> (DPA).

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<sup>1</sup> Tags: release of documents by government agencies; criteria for processing sensitive personal information; processing necessary for exercise or defense of legal claims.

<sup>2</sup> 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).

Specifically, your concern revolves mainly on whether the release by POEA of OFW information/records to the OFW's wife is warranted under Section 13 (f) of the DPA.

*Scope; sensitive personal information; lawful criteria for processing*

While we are not privy to the actual contents of the OFW Information/Records being requested, we presume that the same contains SPI based on your letter and the provisions of POEA Advisory No. 08 s. 2019. Under the DPA, the processing of SPI is generally prohibited unless it falls under any of the criteria set forth in Section 13 of the DPA.<sup>3</sup> Specifically, Section 13 (f) provides:

*"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:*

xxx    xxx    xxx

(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 NPC Advisory Opinion No. 2019-013<sup>4</sup>, we had the opportunity to expound on the above provision and clarify on the issue of whether a person, other than the registered owner of real property or his authorized representative, may secure a copy of a tax declaration, where such person requesting is claiming legal interest over a property:

"Therefore, as long as the requestor may properly establish that there is a pending case in court where the tax declaration of the property is material or that the document is necessary to the establishment, exercise or defense of a legal claim, the assessor's office may grant the request from persons other than the registered owner without the latter's consent. This is subject to the existing policies, regulations, and procedures of the assessor's office relative to the release of such document, i.e. payment of fees, etc."

From the foregoing, persons relying on Section 13 (f) for their personal data processing should be able to establish the following:

1. The processing involves SPI;
2. Such SPI is necessary, material, or indispensable:
  - a. For the protection of lawful rights and interests of natural or legal persons in court proceedings; or
  - b. For the establishment, exercise, or defense of legal claims; or
  - c. When provided to government or public authority based on its mandate.

The law makes a distinction among the three (3) instances, mentioned under Item No. 2. This means that each of these instances may justify the processing of SPI under paragraph (f) of Section 13 but the appropriate provision must be established with sufficiency.

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<sup>3</sup> Data Privacy Act of 2012, § 13.

<sup>4</sup> National Privacy Commission, NPC Advisory Opinion No. 2019-013 (April 1, 2019).

While it is true that a claim for financial support between spouses is an exercise of a legal claim, a mere letter asserting that the information sought to be released is going to be used for the exercise of such legal claim may not be sufficient to establish the fact that such information will be processed in accordance with Section 13 (f).

The law does not specify how the aforementioned instances may be established, but in keeping with the spirit of the DPA to safeguard data privacy rights, such instances enumerated under Section 13 (f) require a stricter degree of proof for each of them to be established.

We note that Section 13 readily express that the processing of SPI is prohibited unless certain exceptions are established. This shows that the intent of the law is to impose more stringent conditions to justify or allow the processing of SPI. Further, the burden of proof to establish that an exception provided by law applies to a certain case falls upon the person claiming such exception. Considering the foregoing, we must reiterate that a mere letter from the OFW's wife may not be sufficient to justify the release of OFW information.

In relation to the above, we quote a portion of the Memorandum from the POEA Legal Research, Docket and Enforcement Branch (Annex "E" of your letter):

"... Needless to say, unscrupulous individuals might resort to the submission of letter requests which, on its face, alleges that the said requested information would be used for the filing of legal claims but eventually end up being utilized for illegal purposes.

xxx      xxx      xxx

With respect to the particular request of the wife of an OFW for the issuance of an OFW Information Sheet of her husband, there is admittedly a likelihood that said personal information might be material and necessary for the protection of a lawful right such as the right to receive financial support and may likewise be necessary for the establishment of a legal claim for support in case of deliberate refusal of the husband to comply with what is incumbent upon him. However, for the reasons stated above, the only way for us to ensure that the information sought from our office would be utilized for legally permissible purposes would be to rely on the letter request from the PAO.

xxx      xxx      xxx."

From the foregoing, we understand the concern of the POEA. It seeks some assurance that the requested documents will indeed be used to establish, exercise, or defend a legal claim. From the POEA's determination, such assurance is in the form of an official communication from the PAO that indeed, the latter is providing legal assistance to the wife to file an action for support against the OFW and that the OFW Information/Record is necessary for such action/legal claim to prosper.

We also understand the PAO's intention to ease the process for its client. With this, instead of the OFW's wife going back and forth between the two agencies, it is suggested, where reasonable and appropriate under existing PAO rules, that the PAO directly communicate with the POEA, state that status of the legal assistance being given to the OFW's wife, and request the POEA to furnish it with the necessary OFW information for the filing of an action for support, subject of course to any substantive and procedural processes in handling these types of cases/assistance.

We emphasize that the DPA was enacted for the protection of the fundamental human right of privacy while ensuring free flow of information.<sup>5</sup> While it recognizes various lawful bases for processing personal as well as sensitive personal information by personal information controllers, this is with the concomitant responsibility on their part to ensure that the same is processed fairly, securely, and lawfully.

This opinion is based solely on the limited information you have provided. Additional information may change the context of the inquiry and the appreciation of facts. This opinion does not adjudicate issues between parties nor impose any sanctions or award damages.

For your reference.

Very truly yours,

**(Sgd.) RAYMUND ENRIQUEZ LIBORO**  
Privacy Commissioner

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<sup>5</sup> Data Privacy Act of 2012, § 2.