



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

NPC Circular 21-_____

Date :

Subject : **GUIDELINES ON ADMINISTRATIVE FINES**

WHEREAS, it is the policy of the State to protect the fundamental human right of privacy of communication while ensuring free flow of information to promote innovation and growth;

WHEREAS, the National Privacy Commission (Commission) was created under Republic Act No. (R.A.) 10173, the "Data Privacy Act of 2012" (DPA), in order to discharge the duty of the State to protect individual personal information in information and communications systems in the government and the private sector;

WHEREAS, the Commission has the express mandate under R.A. 10173 and its Implementing Rules and Regulations to (1) ensure compliance with the provisions of R.A. 10173; (2) receive complaints, institute investigations, and adjudicate on matters affecting any personal information; (3) compel any entity, government agency or instrumentality to abide by its orders or take action on a matter affecting data privacy; and (4) generally perform such acts as may be necessary to facilitate cross-border enforcement of data privacy protection;

WHEREAS, the Commission shall perform all acts as may be necessary to implement the DPA, its Implementing Rules and Regulations and the Commission's other issuances, and to enforce its Orders, Resolutions or Decisions, including the imposition of administrative sanctions, fines, or penalties.

WHEREAS, the Commission recognizes the necessity of the enforcement of administrative fines that are proportionate and dissuasive for the effective exercise of its mandate.

WHEREFORE, in consideration of these premises, the Commission hereby issues this Circular fixing the amount of administrative fines to be imposed for violations of R.A. No. 10173, its Implementing Rules and Regulations (IRR), and other issuances and orders of the Commission.

Section 1. Scope - This Circular is limited in coverage to Personal Information Controllers (PICs) and Personal Information Processors (PIPs) from the private sector.

For the government sector, public official or employees found to have violated the DPA, its IRR and other issuances and orders of the Commission, shall be subject to appropriate action.

Section 2. Administrative Fines. – Any PIC or PIP who shall violate the following provisions of R.A. 10173, its Implementing Rules and Regulations, issuances and orders of the Commission shall be liable to an administrative fine. The amount of the fine for each count of infraction shall fall within the ranges identified below, and determined in accordance with the factors enumerated under Section 3:

TIER 1
<p>Any natural or juridical person processing personal data that infringes on the following provisions and implementing issuances by the Commission shall be subject to administrative fines of 1% to 5 % of the annual gross income of the immediately preceding year of the violation:</p> <ol style="list-style-type: none"> a. Violation of any of the general privacy principles in the processing of personal data, pursuant to Section 11 of the DPA; b. Failure to comply with the conditions for consent, pursuant to Section 3 (b) of the DPA; and c. Violation of any of the data subject rights pursuant to Section 16 of the DPA.
TIER 2
<p>A personal information controller that infringes on the following provisions and the corresponding implementing issuances by the Commission shall be subject to administrative fines of .5% to 3 % of the annual gross income of the immediately preceding year of the violation:</p> <ol style="list-style-type: none"> a. Any failure to implement reasonable and appropriate measures to protect the security of personal information, pursuant to Section 20 (a) (b) (c) (e) of the DPA; b. Any failure to ensure that third parties processing personal information on their behalf shall implement security measures, pursuant to Section 20 (c)(d) of the DPA; and c. Any failure to notify the Commission and affected data subjects of personal data breaches pursuant to Section 20 (f) of the DPA, unless otherwise punishable by Section 30 of the DPA.
TIER 3
<p>Any natural or juridical person processing personal data that infringes on the following provisions and the corresponding implementing issuances by the Commission shall be subject to Fine not less than Php 50,000 but not exceeding Php 100,000.</p> <ol style="list-style-type: none"> a. The failure to register true and updated information with the Commission the identity and contact details of the PIC, the data processing system, and

information on automated decision making, pursuant to Sections 7(a), Section 16, and 24 of the DPA;

TIER 4

Any natural or juridical person processing personal data that infringes on the following provisions and the corresponding implementing issuances by the Commission shall be subject to Fine **not exceeding Php 50,000**:

Failure to comply with any order by the Commission, or of any of its duly-authorized officers, pursuant to Section 7 of the DPA. Provided that the fine is in addition to the fine imposed for the infraction subject of the order of the Commission; and

(e.g. if Order pertains to implementation of security measures, fine for that infraction will be added to Php 50,000).

This Circular shall also apply to infractions to be provided in future issuances of the Commission. In those instances, the range of applicable fines shall be set out in such issuance.

Section 3. Factors Affecting Fines. The Commission shall consider the following factors in determining the amount of the fine within the range provided in Section 2:

- a. Whether the violation occurred due to negligence, or through intentional violation, on the part of the PIC or PIP;
- b. Whether or not the violation resulted in damage to the data subject; the degree of damage to the data subject, if any, may be considered as basis for the imposition of a higher penalty;
- c. The nature and/or duration of the infraction, in relation to the nature, scope, and purpose of the processing;
- d. Action or measure taken prior to the violation to protect the personal data being processed as well as the rights of the data subject;
- e. Any previous infractions determined by the Commission as contained in its orders, resolutions or decisions;
- f. Categories of personal data affected;
- g. The manner in which the PIC or PIP discovered the infraction, and whether it informed the Commission;
- h. Any mitigating action adopted by the PIC or PIP to reduce the harm to the data subject;
- i. Any other aggravating or mitigating circumstances as appreciated by the Commission, including financial benefits or losses avoided; and
- j. The number of data subjects affected by the violation.

In the event that multiple data subjects sustain damage on account of a single violation by the PIC or the PIP, the Commission may opt to consolidate the penalties taking into account

the number of data subjects affected in imposing a higher fine, or impose multiple fines for each and every count corresponding to each data subject affected; provided, that the Commission shall include in the notice to the PIC or PIP required under Section 4 whether the violation is to be considered as a single violation or one that consists of multiple counts.

For the purpose of ascertaining the annual gross income of the PIC or PIP, the Commission may evaluate and require the submission of the PIC's or PIP's audited financial statements of the immediately preceding year of the violation filed with the appropriate tax authorities, the last regularly prepared balance sheet or annual statement of income and expenses, and such other financial documents as may be deemed relevant and appropriate.

Section 4. *Due Process.* – The administrative fine shall be imposed only after notice and hearing are afforded to the PICs and PIPs.

In case the PIC or PIP subject of a fine fails to appear or submit its comment or equivalent pleading, as the case may be, despite due notice, the Commission shall decide on the alleged infraction based on the evidence on record.

If the complaint alleges a violation of the DPA which incurs criminal liability and the facts proven only constitute one or some of the infractions under this Circular, the PIC or PIP shall be fined for the infraction proven provided it is included in the violation alleged.

A violation charged includes the infraction proven when some of the essential elements or ingredients of the former, as alleged in the complaint, constitute the latter.

Section 5. *Effect of- Appeal.* – An appeal shall not stay the immediate enforcement and imposition of the administrative fine unless otherwise restrained by the Court of Appeals or the Supreme Court.

Section 6. *Refusal to Comply* – In case of refusal to pay the adjudged administrative fine under this Circular, the PIC or PIP may be subject to, among others, appropriate contempt proceedings under the Rules of Court, cease and desist orders, temporary or permanent bans on the processing of personal information, and other processes or reliefs as the Commission may be authorized to initiate pursuant to Section 7 of the DPA.

Section 7. *Periodic Review/Modification.* This Circular may be modified, amended, supplemented, or repealed as may be deemed necessary and proper by the Commission.

Section 8. *Separability Clause.* In the event that any provision in this Circular be declared invalid or unconstitutional, the remaining provisions shall remain effective and in full force and effect.

Section 9. *Applicability Clause.* These rules apply to covered PICs and PIPs for the above infractions prospectively.

Section 10. *Effectivity.* – This Circular shall take effect fifteen (15) days following its publication in one (1) newspaper of general circulation.

Approved:

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Privacy Commissioner

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