



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

**PRIVACY POLICY OFFICE
ADVISORY OPINION NO. 2021-032¹**

9 August 2021



**Re: DISCLOSURE OF PHOTOGRAPHS OF ACCUSED IN
CRIMINAL CASES**

Dear 

We write in response to your request for advisory opinion received by the National Privacy Commission (NPC) to provide guidance on the legality of obtaining photographs of accused individuals taking into consideration the provisions of the Data Privacy Act of 2012² (DPA).

From your letter, we understand that you are a party-in-interest and the counsel of the family of the victim in a murder case in 2018. The accused in the criminal case are allegedly members of the Philippine National Police (PNP) who were charged for two counts of murder. A warrant of arrest had been issued in October 2019 against the twenty (20) accused police officers, as evidenced by your attachment.

We understand further that despite the issuance of the warrant of arrest, you have not seen nor felt an earnest effort on the part of the police to locate, arrest and detain the remaining sixteen (16) accused who are still at large. You are now constrained to actively pursue the remaining accused and bring them to justice using other lawful means. We understand that you requested from the PNP the high-resolution photographs of the accused, but the latter refused to grant the request on the ground that photographs are protected under the DPA.

You now come to the Commission for guidance on the following inquiries:

1. Whether or not the photographs submitted by the accused police officers to the PNP pursuant to their application for admission or employment constitute personal information or sensitive personal information as to come within the coverage and

¹ Tags: social welfare and development; fulfillment of mandate of public authority; freedom of information; privacy notice.
² An Act Protecting Individual Personal Information in Information and Communications Systems in the Government and the Private Sector, Creating for this Purpose a National Privacy Commission, and for Other Purposes [Data Privacy Act of 2012], Republic Act No. 10173 (2012).

protection of the DPA considering the particular circumstances of the accused police officers in relation to the commission of the crimes and their current status as fugitives from the law;

2. Whether or not the submission of their photographs as part of their application for admission or employment with the PNP constitutes consent that is “freely given” as contemplated under the DPA; and
3. Whether or not the submission of their photographs as part of their application for admission or employment with the PNP constitutes compulsion, as to vitiate consent, under the admission or employment processes or procedures of the PNP.

Photographs as personal and sensitive personal information

Under the DPA, personal information is defined as 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.³ In addition, the law provides for an exclusive list of information that are considered as sensitive personal information which includes, among others, information about any proceeding for any offense committed or alleged to have been committed by the individual.⁴

Thus, images of an individual generally fall under this category as they may reasonably or directly ascertain the identity of the data subject. However, considering the peculiar circumstances of this case where the photographs sought are connected to the crime alleged to have been committed, then the photographs of the accused may be considered as sensitive personal information. Either way, these photographs are indeed under the coverage of the DPA.

Nevertheless, the law does not absolutely prohibit the disclosure of personal information or sensitive personal information. Sections 12 and 13 of the DPA provide the criteria where processing of personal information and sensitive personal information, respectively, are allowed.

Disclosure of photographs allowed under Section 13 of the DPA

Under the DPA, 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.⁵ As applied in the instant case, we may consider the photographs of the

³ Data Privacy Act of 2012, § 3 (g).

⁴ *Id.* § 3 (l) Sensitive personal information refers to personal information:

- (1) About an individual’s race, ethnic origin, marital status, age, color, and religious, philosophical or political affiliations;
- (2) About an individual’s health, education, genetic or sexual life of a person, or to any proceeding for any offense committed or alleged to have been committed by such person, the disposal of such proceedings, or the sentence of any court in such proceedings;
- (3) Issued by government agencies peculiar to an individual which includes, but not limited to, social security numbers, previous or cm-rent health records, licenses or its denials, suspension or revocation, and tax returns; and
- (4) Specifically established by an executive order or an act of Congress to be kept classified.

⁵ Data Privacy Act of 2012, § 11.

accused as sensitive personal information, the lawful criteria for processing of which is found under Section 13 of the law.

Particularly, the case at hand may find legal ground under Section 13 (f) which provides: “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.”

While jurisprudence has settled that “the interest of the private complainant is limited only to the civil liability arising from the crime,”⁶ it is still evident that there exists a valid legal claim by the bereaved family of the victim. In order for the civil liability to arise, the crime should be judicially tried, and the accused convicted. Bringing the remaining accused who are still at large to justice is within the purview of the abovementioned Section 13 as an exercise of a valid legal claim as well as the protection of lawful rights and interests in a court proceeding.

As to the other questions on the submission of photographs as part of an application for admission or employment with the PNP, the lawful basis for the processing of the same is not consent. These photographs are most probably required by the PNP based on applicable laws and regulations of the Civil Service Commission on recruitment, selection, and placement.

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.) IVY GRACE T. VILLASOTO
OIC - Director IV, Privacy Policy Office

⁶ People v. Alapan, G.R. No. 199527, January 10, 2018, citing Bautista v. Cuneta-Pangilinan 698 Phil. 111 (2012).