



Republic of the Philippines  
NATIONAL PRIVACY COMMISSION

**COMPLAINTS AND  
INVESTIGATION DIVISION -  
NATIONAL PRIVACY  
COMMISSION**

*Complainant,*

-versus-

*For: Violation of the  
Data Privacy Act of 2012*

**PHILIPPINE NATIONAL POLICE  
REPRESENTED BY THE CHIEF,  
PNP, NATIONAL  
HEADQUARTERS CAMP  
CRAME, QUEZON CITY**

*Respondent.*

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**RESOLUTION**

***AGUIRRE, D.P.C.:***

Before this Commission is an application by the Complaints and Investigation Division (CID) for the issuance of a Cease-and-Desist Order (CDO) against the Philippine National Police (PNP), particularly the Calbayog-PNP, for an alleged unauthorized profiling and processing of personal information and sensitive personal information.

**The Facts**

On 19 March 2021, the Commission received an application from the CID for an issuance of a CDO against the PNP. It's factual narration states thus:

On 15 March 2021, the Quick Response Team of the Complaints and Investigation Division (CID) received instructions to investigate the possible data privacy violations

committed by the Calbayog-Philippine National Police (PNP) in relation to a letter requesting the list of lawyers representing Communist Terrorist Group (CTG) personalities. The letter was addressed to the Office of the Clerk of Court of the Calbayog PNP (sic) issued by FGCJ, Police Lieutenant, Chief Intel / SEU of Calbayog-PNP.

Below are the facts gathered about the matter:

On 12 March 2021, the Calbayog Journal posted on their Facebook page a photo of the Calbayog-PNP letter requesting for a list of lawyers representing the CTG personalities in court.

On the same day, news outlets such as Rappler, and ABS-CBN News online, reported that Supreme Court Spokesperson BKH said the Calbayog Regional Trial Court (RTC) received request signed by a certain PLT FGCJ. from the Calbayog City Police Station, but “no action” has been done by the said court so far. In addition, the ABS-CBN report showed that the police also attached a table, which included a “mode of neutralization,” and the lawyer’s affiliations, among others. On the other hand, MN posted the same letter on his Twitter account and reported the same. xxx<sup>1</sup>

The CID included the subject letter-request and a table for the RTC Calbayog to fill out, with the fields “legal personality, affiliations, client (CTG personality), mode of neutralization, case filed, status.”<sup>2</sup>

The CID prays for the issuance of a Cease and Desist Order, stating thus:

The act of requesting for the names of lawyers representing suspected communist terrorist group is not part of the PNP’s mandate. It is detrimental to public interest, and the practice of the legal profession. It blatantly interferes and discriminates against lawyers for doing their professional duty. Moreover, we note that such request was made without any authority or statement of purpose and is therefore in gross disregard and violation of the rights of the data subjects involved. The letter request poses a palpable risk that can cause grave and irreparable injury to affected data subjects.

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<sup>1</sup> Application for Cease and Desist Order In re: The Calbayog-PNP Letter Request. Dated 16 March 2021. Page 2.

<sup>2</sup> *Id.*, at page 15.

Hence, based on the foregoing, it is clear that grounds for the issuance of a cease-and-desist order are present, pursuant to Section 4 of NPC Circular No. 20- 02<sup>37</sup>. Said Section of NPC Circular No. 20-02 provides that the grounds for the issuance of Cease and Desist Order are the following: (A) the Adverse Party is doing, threatening or is about to do, is procuring to be done, some act or practice in violation of the DPA, its IRR, or other related issuances; (B) such act or practice is detrimental to national security or public interest, or the CDO is necessary to preserve and protect the rights of a data subject; and (C) the commission or continuance of such act or practice, unless restrained, will cause grave and irreparable injury to a data subject.<sup>3</sup>

### Issue

The sole issue for this application is whether or not a Cease and Desist Order shall be issued against the PNP in relation to the letter-request made by P/Lt. FGCJ. to the Calbayog RTC.

### Discussion

The NPC Circular No. 2020-02<sup>4</sup> (NPC Circular 2020-02) provides the Rules for the Issuance of a Cease and Desist Order. It provides the following grounds:

Section 4. Grounds for the Issuance of Cease and Desist Order.  
- No CDO shall be issued unless it is established by substantial evidence that all of the following concur:

A. the Adverse Party is doing, threatening or is about to do, is procuring to be done, some act or practice in violation of the DPA, its IRR, or other related issuances;

B. such act or practice is detrimental to national security or public interest, or the CDO is necessary to preserve and protect the rights of a data subject; and

C. the commission or continuance of such act or practice, unless restrained, will cause grave and irreparable injury to a data subject.

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<sup>3</sup> *Id.*, at Page 12.

<sup>4</sup> NPC Rules On The Issuance Of Cease And Desist Orders. Dated 06 October 2020.

The grounds are stated in a cumulative manner, requiring the concurrence of each ground.

*The ground that “the Adverse Party is doing, threatening or is about to do, is procuring to be done, some act or practice in violation of the DPA, its IRR, or other related issuances” is not present.*

The act of processing that is subject to the application for a CDO in this case is the “unauthorized profiling and processing of personal information and sensitive personal information.”<sup>5</sup>

The application specifically hinged on the letter-request made by P/Lt. FGCJ to the Calbayog RTC. The material facts alleged by CID to establish the grounds for such issuance, however, indicates that the PNP is no longer “doing, threatening, or is about to do, is procuring to be done, some act or practice in violation of the DPA, its IRR, or other related issuances.”

The CID, in their application, included attachments of news articles reporting the official statement from Supreme Court Spokesperson BKH that no action has been made by the RTC on the letter-request.<sup>6</sup>

The CID likewise stated that P/Lt. FGCJ was ordered to be relieved from his post. It reproduced the full statement of PNP Officer-in-Charge Lt. Gen. GE with regard to this issue, stating thus:

In view of these initial findings and in consultation with our Chief PNP, Police General DMS, I have already directed the relief of Plt FGCJ as the Chief of the Intelligence Unit of the Calbayog City Police Station.

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<sup>5</sup> Application for Cease and Desist Order In re: The Calbayog-PNP Letter Request. Dated 16 March 2021. Page 1.

<sup>6</sup> Application for Cease and Desist Order In re: The Calbayog-PNP Letter Request. Dated 16 March 2021. Pages 14, 16, 18.

We are currently checking if there were similar actions in other areas. At the same time, we are investigating to determine up to what level of police hierarchy is involved in this incident.

What is certain at this point is that the PNP top brass did not issue any order pertaining to that, and will never tolerate such unprofessional method of information-gathering.

We fully understand the sentiments of the members of the legal community and for this, I, on behalf of the men and women of the Philippine National Police, sincerely apologize for this reckless behavior.<sup>7</sup>

This disavowal and condemnation of the PNP of P/Lt. FG CJ's letter request, including their action of relieving him from his post, together with the fact that the Calbayog RTC refused to disclose any lawyer's name, affiliation, their clients' names, cases filed and case statuses, prevent the PNP from doing, threatening to do, or procuring to be done, some act or practice in violation of the DPA, its IRR, or other related issuances. The first ground is therefore not applicable in this case.

*The ground that "such act or practice is detrimental to national security or public interest, or the CDO is necessary to preserve and protect the rights of a data subject" is present.*

This second ground is based on the Data Privacy Act (DPA) and further elaborated in the Implementing Rules and Regulations (IRR) as an instance when the Commission may issue cease and desist orders. Section 9(f)(3) of the IRR states:

Section 9. *Functions.* The National Privacy Commission shall have the following functions:

f. *Enforcement.* The Commission shall perform all acts as may be necessary to effectively implement the Act, these Rules, and its other issuances, and to enforce its Orders, Resolutions or

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<sup>7</sup> *Id.*, at page 3.

Decisions, including the imposition of administrative sanctions, fines, or penalties. This includes:

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3. Issuing cease and desist orders, or imposing a temporary or permanent ban on the processing of personal data, upon finding that **the processing will be detrimental to national security or public interest, or if it is necessary to preserve and protect the rights of data subjects.**<sup>8</sup>

It is important to consider that this ground provides for two (2) alternative conditions for its application – the first one being “such act or practice is detrimental to national security or public interest” and the second one being that “the CDO is necessary to preserve and protect the rights of a data subject.” Given the alternative nature of the conditions, the presence of either one will be sufficient for the application of this ground.

The first condition looks at the nature of the act *per se* and whether it can be considered as detrimental to national security or public interest.

The Supreme Court discussed public interest in the case of *Valmonte v. Belmonte Jr.*, stating thus:

In determining whether or not a particular information is public concern there is no rigid test which can be applied. “Public concern” like “public interest” is a term that eludes exact definition. Both terms embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen. In the final analysis, **it is for the courts to determine on a case by case basis whether the matter at issue is of interest or important, as it related to or affects the public.**<sup>9</sup>

Notably, the CID alleges the following in their Application for the issuance of the CDO:

[T]he Calbayog-PNP did not state in their letter the purpose of having a list of lawyers who represent CTG personalities

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<sup>8</sup> Section 9, Implementing Rules and Regulations of the Republic Act No. 10173, known as “The Data Privacy Act of 2012.” Dated August 24, 2016.

<sup>9</sup> G.R. No. 74930 (1989). Emphasis in the original.

in court but said it was “for subsequent submission to PNP higher offices.”

The PNP is mandated to prevent and investigate crimes, however, the lawyer-data subjects who are involved in this instance are not criminals nor are they involved in any criminal act, as such this request of the PNP to process their data is outside of their mandate.

**Lawyers who represent their clients, whether CTG personalities or not, are merely carrying out their sworn duties as officers of the court to defend and uphold the rights of their clients.** This kind of profiling of lawyers goes against the Basic Principles on the Role of Lawyers, to wit:

1. “Governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference and shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”
2. Lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions

Such processing of personal data also interferes with the lawyer’s code of professional responsibility, to wit:

Rule 2.01 - “A lawyer shall not reject, except for valid reasons, the cause of the defenseless or the oppressed.”

A lawyer, by one’s oath, swears to be an instrument of justice. It is a lawyer’s duty to protect the rights and interests of their clients, whoever their clients may be. In turn, the Government must ensure that lawyers are able to perform their duties without threats and intimidation. The PNP should well be reminded of the fact, *that lawyers are vital partners of the Government in the administration of justice, even when a lawyer’s advocacy may be adversarial to the State. But in protecting the rights of the accused, lawyers should not be identified as one with the accused.*<sup>10</sup>

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<sup>10</sup> Application for Cease and Desist Order In re: The Calbayog-PNP Letter Request. Dated 16 March 2021. Page 9. Emphasis supplied.

The Commission recognizes the destructive effect of such letter-requests not just to the legal profession but, as cited by the CID, in the Government's administration of justice. The fact that the lawyers subject to the letter-request are part of a specific class of those who represent CTG personalities in the Calbayog RTC is of no moment.

The law does not require a large number of individuals or a large scope of area to be involved for a matter to be considered public interest. The Supreme Court has even pronounced the term "public" is a "comprehensive, all-inclusive term" and said that "properly construed, it embraces everyone."<sup>11</sup>

The inability of lawyers to perform their duties without threats and intimidation is a matter that directly affects the lives of the general public. This is likewise recognized by the Supreme Court which issued an official statement a few days after public reports of the letter-request:

The Supreme Court is mindful that nothing prevents it from standing by all court officers, judges and lawyers alike, as it now does in no uncertain terms. This principle is not in debate, but has remained fixed on administering justice amid a history of shifting social and political tides. Every threat to a lawyer or judge that prevents them from exercising their functions has very serious repercussions on the ideal that the rule of law must be accessible in an impartial and transparent manner to all parties. Every right guaranteed in the Constitution must be protected.

We are all too aware that everything the Court stands for must bend its arc toward ensuring that all its officers can fairly and equitably dispense their duties within the legal system, unbridled by the constant fear that such exercise may exact the highest cost. In this light, the Court condemns in the strongest sense every instance where a lawyer is threatened or killed, and where a judge is threatened and unfairly labeled. We do not and will not tolerate acts that only perverse justice, defeat the rule of law, undermine the most basic of constitutional principles, and speculate on the worth of human lives.

We acknowledge and share the legitimate concerns of the public, the profession, the Judiciary, as well as law enforcers

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<sup>11</sup> Subido v. Ozaeta, G.R. No. L-1631. Feb. 27, 1948.



and public servants in general. We are aware that there are wayward elements who, in their zeal to do what is necessary, would simply brush aside the limitations in our law as mere obstacles. This should never be countenanced, for it is only in the enjoyment of our inalienable and indivisible rights that our freedoms become meaningful.<sup>12</sup>

Finding that the act of P/Lt. FGCJ, whether or not abated, was “detrimental to national security or public interest”, the Commission need not discuss the alternative ground requiring that “the CDO is necessary to preserve and protect the rights of a data subject.” The second ground is therefore present in this case.

*The ground that “the commission or continuance of such act or practice, unless restrained, will cause grave and irreparable injury to a data subject” is not present.*

This ground pertains to a grave and irreparable injury that a data subject stands to incur if the complained act is not restrained.

The relief of P/Lt. FGCJ from his post and express disavowal by the PNP following the incident are material facts that already demonstrate the desistance of processing. The CID has likewise established in their Application and its attachments that the Calbayog RTC did not disclose any lawyer’s personal data, despite the request. The Supreme Court<sup>13</sup> has also renounced any disclosure or such other act that may jeopardize its judges and lawyers, who are considered officers of the Court. Their official statement declared:

We encourage lawyers who have experienced harassment, or whose clients have experienced threats or harassment, to file the necessary motions in pending cases, petitions, or complaints in order that our courts may receive the evidence, determine the facts, and, based on the issues framed, provide

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<sup>12</sup> Memorandum to Atty. BKH, Chief, Public Information Office, Supreme Court. Re: Instructions to Read the Statement of the Members of the Court En Banc Responding to Calls for Action Regarding the Killing of Lawyers and Threats to Judges. Dated 23 March 2021.

<sup>13</sup> CONST. art. VIII, §6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

the relevant reliefs for each case. General invocations of policy will be better supported by experience with the system. In so doing, we can assess what revision or institutional change is necessary to effectively and efficiently further protect our basic rights.

The Supreme Court has always operated within institutional restraints, but it is far from resigned to spectate as clear breaches of constitutional rights are carried out beyond its halls. We remain conscious of our role to ensure that the rule of law is resilient and effective in a just, fair, and timely manner. The Bench and the Bar, as well as the public, can rest assured that we will continue to unflinchingly comply with our constitutional duty to act decisively when it is clear that injustices are done. xxx<sup>14</sup>

These facts, when put together, show that the act sought to be restrained with the issuance of the CDO has already ceased to exist as a result of its invalidation by the PNP itself and the subsequent actions of the Calbayog RTC and the Supreme Court. Taking these material facts into consideration, the Commission finds that there is no grave and irreparable injury to be incurred by the data subjects if the CDO will not be issued.

The third ground, therefore, does not apply in this case.

Absent the first and third grounds required under Section 4 of NPC Circular No. 2020-02, the application for a CDO against the PNP must be denied.

**WHEREFORE**, all these premises considered, this Commission hereby **DENIES** the application by the Complaints and Investigation Division for a Cease and Desist Order against the Philippine National Police.

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

**SO ORDERED.**

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<sup>14</sup> Memorandum to Atty. BKH, Chief, Public Information Office, Supreme Court. Re: Instructions to Read the Statement of the Members of the Court En Banc Responding to Calls for Action Regarding the Killing of Lawyers and Threats to Judges. Dated 23 March 2021.

Pasay City, Philippines;  
25 March 2021.

(sgd)  
**LEANDRO ANGELO Y. AGUIRRE**  
*Deputy Privacy Commissioner*

WE CONCUR:

(sgd)  
**RAYMUND ENRIQUEZ LIBORO**  
*Privacy Commissioner*

(sgd)  
**JOHN HENRY DU NAGA**  
*Deputy Privacy Commissioner*

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