



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

**PRIVACY POLICY OFFICE
ADVISORY OPINION NO. 2022-012¹**

19 August 2022

[REDACTED]

**Re: REMEDIES AGAINST THE ALLEGED DATA BREACH
INVOLVING WORKABROAD.PH (WORKABROAD)**

Dear [REDACTED]

We respond to your 9 December 2021 letter requesting our Advisory Opinion on the above matter.

We draw from your letter that the Philippine Overseas Employment Administration (POEA) has received numerous reports of overseas employment job seekers falling victim to the “Please Read and Understand” online scam/illegal recruitment scheme. Under the said scheme, the sender uses the name and license number of a licensed recruitment agency (LRA) in text messages or e-mails informing OFW-applicant/s that they were selected for a job abroad. The OFW-applicant/s are then instructed to pay a fee – usually labeled as reservation fee, orientation fee, or coaching fee – through money transfer and remittance platforms like Western Union, Palawan Pawnshop, and Cebuano Lhuillier Pera Padala. The scammers have also modernized to include payment platforms such as GCash, PayMaya and 7-ELEVEN.

For the period 16 June up to 13 September 2021, the POEA’s Anti-Illegal Recruitment Branch (AIRB) received complaints and inquiries from OFW-applicant/s and LRAs regarding a variation of the scheme in which they were asked to remit PhP3,000 in exchange for reservation of a slot for deployment to Canada. The AIRB noticed that, from July to August 2021, the names used in the scam e-mail ran almost alphabetically or used LRA names starting with “P” through “S”. Of the eleven (11) victims who responded to the AIRB’s inquiry on where they provided their contact information, eight (8) mentioned WorkAbroad.

¹ Tags: Special Cases; fulfillment of mandate; public authority; data sharing; data sharing agreement;

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In the case of Archway International and Marketing Services, Inc. (“Archway”), they reported the use of their agency’s name in the “Please Read and Understand” online scam for supposed deployment to Canada and the United Kingdom. Archway denies any involvement, and later reported that twenty-seven (27) applicants complained about the PhP3,000 training/seminar fee they paid through GCash. Archway also reported that ten (10) applicants registered with WorkAbroad.

You state further that WorkAbroad is an affiliate of JobStreet, a popular online employment website/aggregator catering to countries in Asia. WorkAbroad’s primary market is the Philippines, particularly OFWs, LRAs, and their partner foreign employers/principals.

WorkAbroad is reputed to be a legitimate job search website for OFWs, LRAs, and foreign principals. Its website includes a feature in which the applicant can upload his/her resume while additional information may be collected and stored further in their database. Some LRAs are also registered with WorkAbroad where they post job openings. While the profile of a particular LRA may include its license number, such data will not appear when a search is made using the POEA’s public database.

Thus, you seek an Advisory Opinion on the following matters:

1. Whether the POEA may request WorkAbroad to disclose who has access to the applicant’s resumes and contact information?
2. Whether the POEA may share with another government agency, in particular the DOJ, the data that it will receive from WorkAbroad after the execution of a Data Sharing Agreement (DSA).

For proper perspective, we find it necessary to discuss the salient features of the Data Privacy Act of 2012 (DPA) and its related rules and issuances –

Special Cases; fulfillment of mandate; public authority;

The Implementing Rules and Regulations (IRR) of the DPA excludes from the scope of the law certain types of processing that are considered necessary due to its purpose, function, or the activity involved. In particular, Section 5 (d) of the IRR provides:

d. Information necessary in order to carry out the functions of public authority, in accordance with a constitutionally or statutorily mandated function pertaining to law enforcement or regulatory function...subject to restrictions provided by law...

We recognize that the POEA is legally mandated to regulate private sector participation in the recruitment and overseas placement of workers. It is also tasked to formulate and implement a system for promoting and monitoring the overseas employment of Filipino workers, taking into consideration their welfare and the domestic manpower requirements.² In addition to its powers and functions, it informs migrant workers not only of their rights as workers but also

² An Act to Strengthen the regulatory functions of the Philippine Overseas Employment Administration (POEA), Amending for this purpose Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, [R.A. No. 9422, § 1]

of their rights as human beings, instruct and guide the workers how to assert their rights, and provide the available mechanism to redress violation of their rights.³

Premised on the foregoing, the POEA's request to access the applicants' resumes and contact information from WorkAbroad may be anchored on Section 5 (d) of the IRR of the DPA, that is, as a fulfillment of its mandate to regulate the private sector's participation in the recruitment and placement of Overseas Filipino workers.

In addition, POEA's request falls under Sections 13(b) of the DPA, *to wit*:

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:

(b) The processing of the same is provided for by existing laws and regulations: Provided, That such regulatory enactments guarantee the protection of the sensitive personal information and the privileged information: Provided, further, That the consent of the data subjects are not required by law or regulation permitting the processing of the sensitive personal information or the privileged information;

For processing under Section 13 (b) cited above, the government or public authority may process information pursuant to the particular agency's constitutional or statutory mandate, and subject to the requirements of the DPA. In this case, the POEA's request for information is in prosecution of its mandate to be able to provide the available mechanism to redress the violation of the rights of the migrant workers.

Data Sharing; Data Sharing Agreement

Data sharing is defined under NPC Circular No. 2020-03 as the sharing, disclosure, or transfer to a third party of personal data under the custody of a personal information controller to one or more other personal information controller/s.⁴

On the other hand, a data sharing agreement (DSA) refers to a contract, joint issuance or any similar document which sets out the obligations, responsibilities and liabilities of the PICs involved in the transfer of personal data between or among them, including the implementation of adequate standards for data privacy and security and upholding the rights of the data subjects.⁵

Please note that under Section 8 of NPC Circular No. 2020-03, the execution of a DSA is not mandatory:

SECTION 8. Data sharing agreement; key considerations. – Data sharing may be covered by a data sharing agreement (DSA) or a similar document containing the terms and conditions of the sharing arrangement, including obligations to protect the personal data shared, the responsibilities of the parties, mechanisms through which data subjects may exercise their rights, among others.

³ *Id.*

⁴ National Privacy Commission, Data Sharing Agreements [NPC Circular No. 2020-03], 2 (F) (December 23, 2020).

⁵ *Id.* § 2(G)

The execution of a DSA is a sound recourse and demonstrates accountable personal data processing, as well as good faith in complying with the requirements of the DPA, its IRR, and issuances of the NPC. The Commission shall take this into account in case a complaint is filed pertaining to such data sharing and/or in the course of any investigation relating thereto, as well as in the conduct of compliance checks.

While the execution of a DSA is optional, we still advise that the parties execute the same as a matter of best practice and for purposes of accountability.

We recognize that the establishment of the Shared Government Information System for Migration (SGISM) is provided under the Migrant Workers and Overseas Filipinos Act of 1995 (R.A. No 8042), as amended by Republic Act 10022, *to wit*:

SEC. 20. Establishment of a Shared Government Information System for Migration. - An inter-agency committee composed of the Department of Foreign Affairs and its attached agency, the Commission on Filipino Overseas, the Department of Labor and Employment, the Philippine Overseas Employment Administration, The Overseas Workers Welfare Administration, The Department of Tourism, the Department of Justice, the Bureau of Immigration, the National Bureau of Investigation, and the National Statistics Office shall be established to implement a shared government information system for migration. The inter-agency committee shall initially make available to itself the information contained in existing data bases/files. The second phase shall involve linking of computer facilities in order to allow free-flow data exchanges and sharing among concerned agencies.

The inter-agency committee shall convene to identify existing data bases which shall be declassified and shared among member agencies. These shared data bases shall initially include, but not limited to, the following information:

- (a) Masterlists of departing/arriving Filipinos;
- (b) Inventory of pending legal cases involving Filipino migrant workers and other Filipino nationals, including those serving prison terms;
- (c) Masterlists of departing/arriving Filipinos;
- (d) Statistical profile on Filipino migrant workers/overseas Filipinos/Tourists;
- (e) Blacklisted foreigners/undesirable aliens;
- (f) Basic data on legal systems, immigration policies, marriage laws and civil and criminal codes in receiving countries particularly those with the large numbers of Filipinos;
- (g) List of labor and other human rights instruments where receiving countries are signatories;
- (h) A tracking system of past and present gender disaggregated cases involving male and female migrant workers;

In the present case, the above shared government information system for migration may be used as basis for the establishment of a DSA with the DOJ for the data that it will receive from WorkAbroad.

Finally, we reiterate that the DPA, its IRR and other relevant issuances of the NPC are not meant to impede the regular functions of government agencies based on their mandates. The right to access personal data is regulated by the DPA and other applicable laws on the matter.

We hope that we have sufficiently addressed your concerns. Rest assured that the NPC is your partner in good governance.

Please be advised that this Advisory Opinion was rendered based solely on the information you have provided. Any extraneous fact that may be subsequently furnished us may affect our present position. Please note further that our Advisory Opinion is not intended to adjudicate the rights and obligations of the parties involved.

Please be guided accordingly.

Very truly yours,

Sgd.

FRANKLIN ANTHONY M. TABAQUIN, IV

Director IV, Privacy Policy Office