



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

**IN RE: WEFUND LENDING
CORPORATION (JUANHAND)
AND ITS RESPONSIBLE OFFICERS**

NPC SS 21-006

For: Violation of the
Data Privacy Act of
2012

INITIATED AS A *SUA SPONTE* NPC
INVESTIGATION ON THE
POSSIBLE DATA PRIVACY
VIOLATIONS COMMITTED BY
WEFUND LENDING CORPORATION
(JUANHAND)

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DECISION

AGUIRRE, D.P.C.;

Before this Commission is a Fact-Finding Report with Application for the Issuance of a Temporary Ban on the Processing of Personal Data (FFR) dated 09 June 2021 against Wefund Lending Corporation (JuanHand), the operator of the online lending application, JuanHand, and its responsible officers.

The Complaints and Investigation Division (CID) of the National Privacy Commission, pursuant to its power to conduct *sua sponte* investigations, filed an FFR against JuanHand. The FFR alleged that JuanHand committed violations of Republic Act No. 10173 or the Data Privacy Act of 2012 (DPA) and the Commission's issuances. This concludes the *sua sponte* investigation conducted by the Commission.

Facts

On 09 June 2021, the CID submitted its FFR against JuanHand following numerous reports of continuing privacy violations committed by several online lending applications (OLAs).¹ The CID

¹ Fact-Finding Report, 09 June 2021, at 1, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

initiated a *sua sponte* investigation against JuanHand² pursuant to Section 7 of the DPA that mandates the Commission to institute investigations in cases it deems appropriate³ and NPC Circular 21-01 (2021 Rules of Procedure) that permits the NPC to initiate *sua sponte* investigations and file complaints for DPA violations.⁴ The FFR serves as the complaint, with the CID as the Nominal Complainant, in *sua sponte* investigations.⁵

In the CID's technical investigation, it downloaded JuanHand installer version v.3.7.1 from Google Play Store and simulated JuanHand's registration and loan application processes.⁶

The permissions required by the application (app) were outlined in Google Play Store prior to its download and installation:⁷

- read calendar events plus confidential information;
- add or modify calendar events and send email to guests without owner's knowledge;
- read your contacts;
- approximate location (network-based); and
- precise location (GPS and network-based).⁸

Upon the installation and opening of the app, it immediately asked for permission to access contacts, thus, the CID stressed that "the permission to access contacts was required upon installation of the application, even without a loan being applied for."⁹

During the CID's simulation, when the loan application form required character references, the app prompted the CID to: "[p]lease allow access to your contacts. This authorization will allow us to speed up your application process and prevent criminals from stealing your money."¹⁰ Thus, the notification for permission to access contacts appeared when the app was opened and when inputting of character references were asked in the loan application process.¹¹ The CID found

² *Id.*

³ *Id.* at 5.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 1.

⁷ Fact-Finding Report, 09 June 2021, at 2, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

⁸ Technical Report, 17 May 2021, at 5 (Annex B), *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

⁹ Fact-Finding Report, 09 June 2021, at 2, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022). Emphasis removed.

¹⁰ *Id.* Emphasis removed.

¹¹ *Id.*

that there was no manual way of entering a phone number and it must be done through giving access to the contact list.¹² Corollary, the loan application would not have progressed to the next step if the character references' phone numbers were not given.¹³

When the CID examined the source code of the app, it showed that the app utilized the Android software development kit (SDK) that provides coding for contacts retrieval, wherein an app will have the ability to collect data from contacts.¹⁴ The "AndroidManifest.xml" file explicitly contained a contacts permissions line as seen in the code "android.permissions.READ_CONTACTS".¹⁵ The CID explained that, when this is enabled, it gives an app the ability to read the user's phone contacts data.¹⁶

The CID also disclosed that "no Privacy Policy was found on both JuanHand's website and mobile application."¹⁷ It searched for JuanHand's Privacy Policy and instead found a link to the Service Agreement, which is "found only during the signup process in the [app] and the user will not be able to see or read the [S]ervice [A]greement again as there is no link of this agreement inside the application and no visible link on [JuanHand's] website."¹⁸

The Service Agreement provided for the following pertinent provisions:

[B. Limitation of Use]

[4. You agree to register with a username that does not to [sic] violate the laws and social ethics and provide your real information, and comply with the following requirements:]

[b].You must provide true, up-to-date, valid and complete information, and **grant Juanhand a permanent right to use the information you provide free-of-charge for the purpose of using Juanhand service.**

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Fact-Finding Report, 09 June 2021, at 2, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

¹⁶ *Id.*

¹⁷ *Id.* at 3.

¹⁸ *Id.*

[K. Privacy]

[2. Source of Information]

[b]. In addition to the information provided to Juanhand by the User voluntarily, User agrees that Juanhand and its partners to collect and verify the User's information, including, but not limited to the following manner:

iv. **information related to personal communication (including, but not limited to, contact list, geographical location, device identification number, social networking profiles)** provided or authorized by the User, or communication information relating to the activities and logging in by the User provided to Juanhand by other Users or third party, Juanhand can collect this information in the User's file.

[vi.] Juanhand will collect your Facebook platform information through your authorization. Including but not limited to: username, user ID, registered email, gender, etc.

[3. Use of Information]

[g]. I authorize the disclosure to and collection of my personal data from Third Party Entities ('Partners') engaged by Juanhand for the purposes stated under the heading Use of Personal Data. These Partners shall refer to my employer (for auto-debit or other auto-deduction mechanism) whether private or government, telecommunication companies (e.g., Globe Telecom, Inc., PLDT, Smart, Sun Cellular), utility companies (e.g., Meralco, Maynilad), government agencies (e.g., SSS, GSIS, NSO, BIR), credit bureaus (e.g., CIC, NFIS), remittance companies (e.g., Palawan Express, Cebuana Lhuillier, etc.), insurance providers (e.g., Sun Life Grepa Financial Inc., Insular Life, etc.), financial service providers (e.g., CC Mobile Financial Services Philippines, etc.), and other service providers. (2) I authorize Lending Company Inc. to share my personal data with Lending Company Inc.'s parent, affiliate, subsidiaries even after my loan with Lending Company Inc. is sold or assigned by it to another creditor for data analytics, determination of insurable interest and amount insured, statistical analysis and demographics, and business development purposes, and fraud detection and investigation.

[h.] I authorize Juanhand to process Mobile device data (e.g., mobile phone number/s, mobile phone message data, SIM, IMEI, or other device identifiers, type of device, device operating system, device settings, user account information for your mobile device or Google PlayStore account, information about mobile network provider, device specifications), **Location data (e.g., mobile device location, time zone setting); Phone data (e.g., contact lists, SMS metadata, types and nature of mobile**

applications found on your mobile device); mobile app usage data (e.g., traffic volume, mobile app usage) and telecommunications usage data or 'telco usage score'.

[4. Disclosure of User's Information by JuanHand]

[d.] When the Borrower is overdue for payment, Juanhand may publish the personal information of such user for the purpose of collecting debt. Juanhand shall not be held liable.

The Data Privacy Act (DPA) establishes that you have the following rights as a data subject:

- You have the right to indicate your refusal to the collection and processing of your personal data. You also have the right to be informed and to withhold your consent to further processing in case there are any changes or amendments to information given to you. Once you have notified us of the withholding of your consent, further processing of your personal data will no longer be done, unless (i) the processing is required pursuant to a subpoena, lawful order, or as required by law; or (ii) the collection and processing is pursuant to any lawful criteria indicated under the terms of this Policy.
- You have the right to reasonable access to your personal data. Furthermore, you have the right to limit and prevent disclosure of your personal data and to receive notification of any possible breaches of your personal data.
- You may also correct or remove any information that you think is inaccurate. You have the right to dispute any inaccuracy or error in your personal data. You may request for the correction or removal of any inaccuracy or error in your personal data by logging into your account or making a formal request with our Data Privacy Officer.
- You have the right to the destruction of your personal data;
- You have the right to damages; and
- You have the right to lodge a complaint with the National Privacy Commission (NPC).

If you would like to make any request in relation to your rights as a data subject, please contact our Data Protection Officer ('DPO') with the contact details listed below. **Please note that the exercise of some of your rights as a data subject is subject to review and may result in the denial of any application currently pending.**¹⁹

¹⁹ *Id.* at 3-4. Emphasis supplied; See Supplemental Report, 31 May 2021, Annex A (JuanHand User Agreement Web), in In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

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The CID, however, found through “JuanHand’s Permission Information,” that JuanHand’s system can do the following:

1. read the borrower’s calendar events plus confidential information;
2. add or modify calendar events;
3. send email to guests without the owner’s knowledge;
4. read borrower’s contacts;
5. collect data from contacts; and
6. pinpoint the borrower’s approximate and precise location through its network and GPS.²⁰

As can be gleaned from the Service Agreement and the permissions that CID discovered in its technical investigation, there are certain permissions that were not disclosed at all in the Service Agreement, particularly the ability to read and modify a borrower’s calendar events and confidential information.

Based on the foregoing, the CID argued that JuanHand violated the DPA and the Commission’s issuances.

First, the CID opined that the undisclosed permissions in JuanHand’s app violated Section 16 of the DPA.²¹ It found that:

The capabilities of JuanHand’s system to read the borrower’s calendar events plus confidential information, add or modify calendar events, send email to guests without the owner’s knowledge, read borrower’s contacts, collect data from contacts and pinpoint the borrower’s approximate and precise location through its network and GPS are all unknown to the prospective borrower. **The permission information [...] is not shown to the users thru [sic] prompts or permissions when applying for a loan but was discovered by the CID Technical Team from the Google Play Store and not from the application itself.**²²

Since JuanHand’s data subjects were not informed that their personal information have been processed, the CID argued that JuanHand violated Section 16 of the DPA, which states that a data subject is

²⁰ *Id.* at 4-5.

²¹ Fact-Finding Report, 09 June 2021, at 5, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

²² *Id.* Emphasis supplied.

entitled to “[b]e informed whether personal information pertaining to him or her shall be, are being or have been processed[.]”²³

Second, the CID asserted that JuanHand’s undisclosed permissions violated the general privacy principles of transparency, legitimate purpose, and proportionality.²⁴

The CID elaborated that pursuant to the transparency principle, a data subject must be aware of the nature, purpose, and extent of the processing of his or her personal data, including the risks involved.²⁵ It argued that JuanHand “has the duty to inform its data subjects, by clearly indicating in its privacy notice, the purpose/s for storage of the personal information they access.”²⁶ Related to this, the CID elucidated that “under NPC Circular 20-01, access is allowed for [OLA] provided [it] will use such information for [Know Your Customer (KYC)] purposes, after accomplishing such purpose, the OLA should have removed their access on the personal information it stored.”²⁷ Thus, the CID claimed that JuanHand violated the principle of transparency because the borrowers were not aware of the nature, extent, and risks involved in granting access to his contacts.²⁸ The app “failed to provide the purpose for the storage of the personal information accessed, and such cannot be seen in the [a]pp’s Privacy Notice nor can [it] be deduced from the permission it requires.”²⁹

As to the principles of proportionality and legitimate purpose, the CID contended that JuanHand violated these general privacy principles when it required access to borrowers’ contacts.³⁰

Legitimate purpose provides that “the processing of information shall be compatible with a declared and specified purpose, which must not be contrary to law, morals, or public policy.”³¹

²³ 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 § 16 (2012).

²⁴ Fact-Finding Report, 09 June 2021, at 6, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

²⁵ *Id.*

²⁶ *Id.* at 7.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Fact-Finding Report, 09 June 2021, at 7, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

³¹ National Privacy Commission, Rules and Regulations Implementing the Data Privacy Act of 2012, Republic Act No. 10173, § 18 (2016).

According to the CID's technical investigation, when the permission to access contacts is denied, a prompt is shown, stating: "Please allow access to your contacts. This authorization will allow us to speed up your application process and prevent criminals from stealing your money."³² Thus, it argued that, "[h]arvesting contacts and data of contacts are irrelevant, unnecessary and excessive in its declared purpose of speeding up the processing of loan applications and prevention of criminals from stealing money."³³

The CID further opined that "the legitimate purpose principle requires that the processing or [sic] personal information should meet one of the criteria for the lawful processing of information as provided in Sections 12 and 13 of the DPA[.]"³⁴ Valid consent or authority under the DPA and other existing laws is necessary for the processing to be authorized.³⁵ Given this, the CID alleged that JuanHand is without valid consent or authority under the DPA to process and store the borrowers' phone contacts, which is in violation of the abovementioned general privacy principles.³⁶

Third, the CID asserted that "Juan[H]and's requirement of having access to phone book contacts even before the processing of the loan clearly violates NPC Circular No. 20-01" or the Guidelines on the Processing of Personal Data for Loan-Related Transactions (Loan-Related Transactions Circular).³⁷ This is because, according to the CID, the Loan-Related Transactions Circular "prohibits access to contact details in whatever form, such as but not limited to phone contact list, the harvesting of social media contacts, and/or copying or otherwise saving these contacts."³⁸ Further, it argued that "[i]n all instances, online lending apps must have a separate interface where borrowers can provide character references and/or co-makers of their own choosing."³⁹ Thus, the CID maintained that:

As discussed, JuanHand did not limit itself to a number of character references of the borrower's own choosing but required access to all phone and social media contacts. It also failed to

³² Fact-Finding Report, 09 June 2021, at 8, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

³³ *Id.* at 7.

³⁴ *Id.* at 8.

³⁵ *Id.* at 9.

³⁶ *Id.* at 10.

³⁷ *Id.*

³⁸ Fact-Finding Report, 09 June 2021, at 10, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

³⁹ *Id.* at 11.

comply with the required separate interface where borrowers can provide character references and/or co-makers of their own choosing. The availability of far less intrusive measures, such as reliance on a limited number of reference contacts provided by the borrower, demonstrates that the measures employed by JuanHand were disproportionate to the aim of evaluation of the loan application and/or loan collection purposes.⁴⁰

Fourth, the CID stated that the Privacy Policy violated the DPA and its issuances:

JuanHand's Privacy Policy, imbedded in the Service Agreement, not only violates the general data privacy principles of transparency, legitimate purpose and proportionality but makes a mockery of the Data Privacy Act when it says that the exercise of the privacy rights by the users is subject to review by JuanHand and may result in the denial of any pending application in violation of Section 16 of the DPA. The borrowers are made to choose between their privacy and the much-needed funds. The consent, therefore, that the borrowers granted to JuanHand was not by will but thru [sic] coercion.⁴¹

In addition, the CID pointed out irregularities in JuanHand's Service Agreement:

The Service Agreement of JuanHand provides that the borrower must provide true, up-to-date, valid and complete information, and grant JuanHand a permanent right to use the information the borrower provided free-of-charge for the purpose of using Juanhand service. The permanent right to use the information provided by the borrower free-of-charge for the purpose of using JuanHand service is in violation of Rule IV of the Implementing Rules and Regulations of the Data Privacy Act of 2012 which states that the personal data should not be retained longer than necessary. Personal data shall not be retained in perpetuity in contemplation of a possible future use yet to be determined.

The provision in the Service Agreement which provides that: 'When the Borrower is overdue for payment, Juanhand may publish the personal information of such user for the purpose of collecting debt. Juanhand shall not be held liable.' violates NPC Circular No. 20-01 specifically Section 3, paragraph D4 of the Circular which states:

⁴⁰ *Id.*

⁴¹ *Id.*

'Access to contact details in whatever form, such as but not limited to phone contact list or e-mail lists, the harvesting of social media contacts, and/or copying or otherwise saving these contacts for use in debt collection or to harass in any way the borrower or his/her contacts, are prohibited. In all instances, online lending apps must have a separate interface where borrowers can provide character references and/or co-makers of their own choosing.'⁴²

Again, the CID reiterated that undisclosed permissions in the app exist, and that JuanHand did not acquire the consent of the data subjects to process personal information arising from these undisclosed permissions.⁴³ The CID considered these acts to be unauthorized processing of personal information in violation of Section 25 of the DPA since JuanHand processed personal information without valid consent or authority under the DPA and other existing laws.⁴⁴

After having alleged violations of the DPA, the CID argued that JuanHand's responsible officers should be held liable pursuant to Section 34 of the DPA.⁴⁵

Lastly, the CID interposed that:

Based on the initial results of the investigation conducted by the CID, there is sufficient ground to warrant for the issuance of a Temporary Ban on the processing of personal data against WEFUND Lending Corporation, in relation to its online lending application, JuanHand. A review of its privacy policy shows that JuanHand's nature, purpose, and extent of accessing and processing user's personal information failed to adhere to the principles of transparency, legitimate purpose and proportionality. The simulation of the installation of JuanHand's application and analysis of its source code show that its use of dangerous permissions, is in direct violation of the prohibition against the access of contacts, as provided in NPC Circular 20-01.⁴⁶

⁴² *Id.* at 13.

⁴³ *Id.* at 12.

⁴⁴ Fact-Finding Report, 09 June 2021, at 12, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

⁴⁵ *Id.* at 13.

⁴⁶ *Id.* at 15-16.

As such, it argued that substantial evidence had been established for the issuance of a temporary ban against JuanHand.⁴⁷

On 16 June 2021, the Commission issued an Order suspending the complaint proceedings until the resolution of the application for the issuance of a temporary ban.⁴⁸ JuanHand was ordered to submit a position paper on the application for the issuance of a temporary ban within ten (10) days from its receipt of the Order.⁴⁹

On 05 July 2021, the CID submitted a Supplemental Fact-Finding Report with Application for Issuance of Temporary Ban on the Processing of Personal Data, impleading specific responsible officers of JuanHand in their official capacities as corporate officers and members of the Board of Directors (Corporate Officers and Directors), in line with Section 34 of the DPA.⁵⁰

In a letter dated 02 August 2021, JuanHand acknowledged receipt of the 16 June 2021 Order issued by the Commission and requested an extension to submit its position paper since its change in physical office caused its belated receipt of the Order.⁵¹

On 12 August 2021, JuanHand submitted a Motion to Properly Serve Order with Motion to Admit Position Paper *Ad Cautelam*⁵² and its Position Paper on the application of the issuance of a temporary ban.⁵³ It attached to the Position Paper a “standalone and rectified Privacy Policy independent from the Service Agreement.”⁵⁴ JuanHand claimed that the new Privacy Policy shall be shown and given consent to by the borrowers upon registration and loan application.⁵⁵

Further, JuanHand clarified that it has not published any image or information of its users for purposes of loan collection or harassment.⁵⁶

⁴⁷ *Id.* at 16.

⁴⁸ Order, 16 June 2021, at 1, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

⁴⁹ *Id.* at 2.

⁵⁰ Supplemental Fact-Finding Report, 05 July 2021, at 2, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

⁵¹ JuanHand Letter, 02 August 2021, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

⁵² Motion to Properly Serve Order with Motion to Admit Position Paper *Ad Cautelam*, 12 August 2021, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

⁵³ Position Paper, 12 August 2021, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

⁵⁴ *Id.* at 2.

⁵⁵ *Id.*

⁵⁶ *Id.* at 3.

It will, however, continue to publish personal information of delinquent users to the Credit Information Corporation for purposes of creating a centralized credit information system.⁵⁷

As regards the undisclosed permissions in its app, JuanHand explained that “[d]espite the embedded privacy policy in the Service Agreement, which we undertake to rectify immediately, we would like to clarify the corresponding consent sought and granted by our users in relation to the permission information”:

<ul style="list-style-type: none"> • send email to guests 	<p>Users are manually fill in his/her email address. There is no way a user become unaware of providing email address. Under section 3(d) of the Service Agreement, we stated clearly that Juanhand may use the User's information to communicate with the User and deliver information via SMS messages, email and phone calls with respect to communications relating to the use of Juanhand by the User.</p>
<ul style="list-style-type: none"> • read borrower's contacts, • collect data from contacts 	<p>Under section 2(b)(iv) and 3(h) of the Service Agreement, we stated clearly that Juanhand will collect and process contact list. More explanation about accessing contact list later.</p>
<ul style="list-style-type: none"> • pinpoint the borrower's approximate and precise location through its network and GPS 	<p>Under section 2(b)(iv) and 3(h) of the Service Agreement, we stated clearly that Juanhand will collect and process geographical location (e.g., mobile device location, time zone setting).⁵⁸</p>

...

Further, we do also read the borrower's calendar events and add or modify calendar events. We consider that accessing and modifying user's calendar is legitimate and proportional to the purpose stated in the Service Agreement for two reasons:

- (i) Credit Analysis and Scoring: by accessing the calendar, we seek to identify due dates of other loans or payment obligations of the users to determine whether or not to provide loan services, and if so, his/her credit limits;

⁵⁷ *Id.* at 3-4.

⁵⁸ *Id.* at 4.

(ii) Due Day Reminder: by adding due date to the users' calendar, it would be easier for the users to apprehend the due date and, thus, repayment obligation.

Therefore, we consider that when users give consent to the Service Agreement, users are materially informed the kind of personal information shall be processed in compliance with section 16(a) of the DPA and have given consent to the above functions.⁵⁹

Nevertheless, JuanHand acknowledged that it shall "enhance the transparency and timeliness of obtaining user's consent by incorporating" certain prompts upon registering as a user in its app.⁶⁰

Lastly, JuanHand stressed that it does not use its users' contact lists for purposes of collection or harassment but only for purposes of identity verification, credit scoring, and fraud prevention.⁶¹ It argued that accessing the borrower's contact list is necessary since, in certain situations, it is the only means available to verify its users.⁶² Thus, "[v]erification by accessing users' contact lists [...] is a less-intrusive and more reliable way for [JuanHand] to assess credit level and risks."⁶³

JuanHand prayed for the dismissal of the application for the issuance of a temporary ban on its processing of personal data.⁶⁴

On 12 August 2021, the Commission issued an Order granting the application for the issuance of a temporary ban against JuanHand because all the requisites for granting a temporary ban were satisfied.⁶⁵ The temporary ban would remain in effect until the final resolution of the *sua sponte* investigation against JuanHand and its Corporate Officers and Directors.⁶⁶ Further, it ordered the following:

Further, pursuant to the **TEMPORARY BAN**, Respondent Wefund Lending Corporation shall:

⁵⁹ Position Paper, 12 August 2021, at 5, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022). Emphasis supplied.

⁶⁰ *Id.*

⁶¹ *Id.* at 7.

⁶² *Id.*

⁶³ *Id.* at 8.

⁶⁴ *Id.* at 10.

⁶⁵ Order, 12 August 2021, at 6-15, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

⁶⁶ *Id.* at 16.

1. Immediately take down its online lending application, JuanHand, to ensure that it is no longer available for download, installation or use by data subjects; and
2. Stop personal data processing activities, including those activities outsourced to third parties, where the processing operations involves use of information from the phonebook, directory, and contact list of data subjects, disclosure of false or unwarranted information, and other unduly intrusive personal data processing methods.⁶⁷

The Commission also ordered JuanHand to file its comment on the allegations in the FFR within ten (10) days from receipt of the Order.⁶⁸

On 02 September 2021, JuanHand took down the app and submitted its Comment to the Order and Temporary Ban dated 12 August 2021.⁶⁹

It emphasized that, pursuant to the 12 August 2021 Order, it has taken down the JuanHand app from Google Play, Apple's AppStore, Huawei's AppGallery, and Vivo Market, thereby making the app unavailable for download by the public in any official platform.⁷⁰ It also attached as annexes its revised Privacy Policy and Service Agreement, as well as their respective correct hyperlinks.⁷¹ Aside from producing a separate Privacy Policy, JuanHand also began incorporating the Privacy Policy in its user registration process.⁷² Users can now view the entire document and choose whether to agree to the Privacy Policy before completing the registration.⁷³

As regards the permissions, JuanHand alleged that it deleted from its app the access to its users' calendar, location, contact list, and social networking profile.⁷⁴ It also removed from its revised Privacy Policy the permissions to access calendar, location, contact list, and social networking profile.⁷⁵ In order to make the prompts for these permissions more "eye-catching," it has shifted from using system prompts to providing more intuitive and visible pop-up prompts

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Comment to the Order and Temporary Ban dated 12 August 2021, 01 September 2021, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

⁷⁰ *Id.* at 1.

⁷¹ *Id.* at 2.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 3.

⁷⁵ Comment to the Order and Temporary Ban dated 12 August 2021, 01 September 2021, at 3, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

when the app attempts to access user's personal information, wherein the users may accept or deny such access.⁷⁶ Effectively, JuanHand explained that these new alterations would ensure that:

[E]very time the data of a user is being accessed, such pop-up prompt will trigger and will halt the entire process. This pop-up prompt is now effective and live in JuanHand App during user registration and loan application. We guarantee to the Commission that there will be no hidden permissions in JuanHand App and that we have implemented a more intuitive design geared towards to providing actionable knowledge to our users and protection of the user's data.⁷⁷

JuanHand also included the "What's New" feature in the app itself and not merely in the download interface of platforms.⁷⁸ Any material changes, such as the amendment of the Privacy Policy and Service Agreement and other new functionalities, among other things, will be shown in the "What's New" interface.⁷⁹

Seeing, however, as the app is not available for the public market, JuanHand explained that it re-created its app in a sandbox mode to ensure that the app fully complies with all the requirements imposed by law and by the Commission.⁸⁰ It attached a quick response (QR) code for the Commission to download the testing version 4.1.1 of the app since JuanHand strives to ensure full alignment with the Commission's regulations prior to the final re-deployment of its app to the public.⁸¹

Lastly, JuanHand attached as annexes its (1) Personal Privacy Information Management Policy which serves as its comprehensive corporate data protection policy and (2) Information Security Emergency Response Management Directive which serves as its structured approach in responding to incidents wherein the users' data privacy may be breached or in any way compromised.⁸² Thus, it prayed that the Commission lift its temporary ban on the app and allow its re-deployment to the public.⁸³

⁷⁶ *Id.*

⁷⁷ *Id.* at 3-4.

⁷⁸ *Id.* at 4.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Comment to the Order and Temporary Ban dated 12 August 2021, 01 September 2021, at 4, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

⁸² *Id.* at 5.

⁸³ *Id.* at 7.

On 10 September 2021, it filed both the Entry of Appearance with Motion to Admit [Supplemental Comment with Motion for Lifting of Temporary Ban]⁸⁴ and the Supplemental Comment with Motion for Lifting of Temporary Ban⁸⁵.

Meanwhile, the Enforcement Division (EnD) of the Commission continuously monitored the availability of the app pursuant to the temporary ban.⁸⁶ It received, however, an email complaint which included a link provided by the JuanHand Collection Department for the downloading of the app.⁸⁷ Upon investigation, it found that the direct download link (DDL) was for JuanHand app version 4.2.0:⁸⁸

To note, this version of the JuanHand APK file (v4.2.0) is different from the one investigated by the Complaints and Investigation Division (CID) which is v3.7.1 and the one [JuanHand] sent in an email [...], which is v.4.1.1, for compliance checking and investigation.⁸⁹

Thus, on 16 September 2021, the EnD issued a Letter to JuanHand regarding its compliance with the Commission's 12 August 2021 Order.⁹⁰ The EnD confirmed that, as of 06 September 2021, the JuanHand app was no longer available for download on different platforms.⁹¹ The EnD, however, relayed that:

[T]he Commission received several reports from Juanhand's users. According to the reports, **JuanHand's Collection Department sent them various links leading to the Direct Download Links to the JuanHand application. Upon investigation, the EnD was able to download the JuanHand application through the Direct Download Links after following the links provided in the reports.**

As the Order dated 12 August 2021 directs JuanHand to 'immediately take down its online lending application,

⁸⁴ Entry of Appearance with Motion to Admit Supplemental Comment with Motion for Lifting of Temporary Ban, 10 September 2021, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

⁸⁵ Supplemental Comment with Motion for Lifting of Temporary Ban, 10 September 2021, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

⁸⁶ Enforcement Division Memorandum, 14 September 2021, at 1, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at 3.

⁹⁰ Enforcement Division Letter of Compliance with Order dated 12 August 2021 in NPC SS 21-006 entitled "*In re: Wefund Lending Corporation (JuanHand)*", 16 September 2021, at 1, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

⁹¹ *Id.* at 2.

JuanHand, to ensure that it is no longer available for download, installation or use by data subjects,' JuanHand is instructed to **EXPLAIN** the foregoing incident within **FIVE DAYS (5)** from receipt of this letter. Such incident could be construed as a violation of the Temporary Ban.⁹²

On 17 September 2021, the Commission issued an Order noting JuanHand's Comment and submissions.⁹³ In the Commission's Order, it emphasized that JuanHand was previously ordered to comment on the FFR dated 09 June 2021 and not the issuance of the temporary ban.⁹⁴ Nevertheless, it reiterated its order for JuanHand and its Corporate Officers and Directors to comment on the FFR within a non-extendible period of ten (10) days from receipt of the Order.⁹⁵

On 08 October 2021, JuanHand submitted its Reply and Explanation to the National Privacy Commission Enforcement Division Letter dated 16 September 2021.⁹⁶ It countered that prior to the commencement of the *sua sponte* investigation, it already prepared a template for the repayment reminder Short Message Service (SMS) and emails it will send out to its users that have availed themselves of loans.⁹⁷ The template includes, among other things, a hyperlink to the JuanHand app.⁹⁸ It explained that:

The sending of SMS and emails is an **automatic process sent by the JuanHand system, without human intervention**, which transmits repayment reminders to the Borrowers[.]

...

Based on the abovementioned template, the hyperlink or DDL has always been part of the messages, both SMS and email, sent to JuanHand users even before the issuance of the Temporary Ban.

...

⁹² *Id.* Emphasis supplied.

⁹³ Order, 17 September 2021, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

⁹⁴ *Id.* at 3.

⁹⁵ *Id.* at 3-4.

⁹⁶ Reply and Explanation to the National Privacy Commission Enforcement Division Letter dated 16 September 2021, 08 October 2021, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

⁹⁷ *Id.* at 2.

⁹⁸ *Id.* at 3.

Unfortunately, after the removal or unavailability of the JuanHand application on the Platforms for download, the standardized or template repayment reminder SMS and emails, which were **inadvertently retained, automatically sent out, without human intervention**, to the JuanHand users, which still contained the hyperlink or DDL to the JuanHand application.⁹⁹

JuanHand stressed that it only became aware of the situation on 17 September 2021, after which it conducted an internal investigation to rectify the situation.¹⁰⁰ Apparently, the “template repayment reminders were not updated or revised—the same unintentionally retained the hyperlink or DDL” since the reminders were “system-generated and automatically sent” to its users following certain timelines or outstanding milestones.¹⁰¹ After being made aware of the situation, JuanHand immediately ordered the removal of the DDLs from its repayment reminders and instructed its designated personnel to ensure that the DDLs that were sent out to users be inaccessible and deactivated.¹⁰² JuanHand posited that since its focus was solely to take down its app from downloading platforms and prepare responses to the orders of the Commission, it committed a “complete and unfortunate oversight” when the DDL to its app continued to be included in its repayment reminder.¹⁰³

Nevertheless, despite the inadvertent sending of SMS and emails containing the DDLs, JuanHand stressed that it never meant to circumvent the prohibition under the temporary ban and that it immediately took actions to rectify the matter.¹⁰⁴ Lastly, as a sign of good faith and in immediate response to the EnD’s letter, JuanHand sent messages to its six hundred thirty-two (632) users that were able to use, access, or download the app during the period of the temporary ban’s effectivity:

Dear Valued Client. We apologize to inform [you] that Juan[H]and application is currently unavailable for downloading in compliance to National Privacy Commission’s order. If you have received Juan[H]and download links before, please do not access it anymore. We would like to express our sincere gratitude to every Juan. Thank you.¹⁰⁵

⁹⁹ *Id.* Emphasis supplied.

¹⁰⁰ *Id.* at 4.

¹⁰¹ *Id.*

¹⁰² Reply and Explanation to the National Privacy Commission Enforcement Division Letter dated 16 September 2021, 08 October 2021, at 4, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

¹⁰³ *Id.* at 5.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 6. Emphasis removed.

On 11 October 2021, JuanHand submitted to the Commission its Comment (on the Fact-Finding Report dated 09 June 2021) addressing the allegations of the CID in its FFR.¹⁰⁶

JuanHand stressed that there is more than one allowable basis for processing in this case: (1) data subject's consent; (2) contract of loan; and (3) legitimate interests pursued as lender.¹⁰⁷ Thereafter, it stated that JuanHand has "already rectified any perceived violation" of the DPA and that it has pursued "legitimate interests and purposes" in processing the personal information of its users.¹⁰⁸ Moreover, it asserted that the data it processed is only "personal information, which can be collected for specified and legitimate purposes determined and declared before, **or as soon as reasonably practicable after collection**, and later processed in a way compatible with such declared, specified and legitimate purposes only."¹⁰⁹ JuanHand argued that, aside from the user's acceptance of the terms and conditions in the pop-up permissions, it considered, in good faith, the continuous use of its app as the user's express consent to the collection of personal information.¹¹⁰

JuanHand countered the contentions of the CID by alleging, first, that it has already corrected the undisclosed permissions.¹¹¹ JuanHand opined that, as regards the permission information claimed by the CID to have been discovered through the Google Play Store and not the JuanHand app itself, the "point of contention [...] boils down to the propriety of the format/manner upon which such permissions are to be disclosed" since the "[p]ermission [i]nformation has already previously existed, albeit in the Google Play Store and not in the OLA itself."¹¹² In any case, JuanHand emphasized that it has already revised and addressed this particular issue by making the following changes:

33.1. Access to users' calendar, location, contact list and social networking profile have been removed and deleted from the JuanHand OLA.

¹⁰⁶ Comment on the Fact-Finding Report dated 09 June 2021, 11 October 2021, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

¹⁰⁷ *Id.* at 5.

¹⁰⁸ *Id.* at 6.

¹⁰⁹ *Id.* at 7. Emphasis supplied.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 8.

¹¹² Comment on the Fact-Finding Report dated 09 June 2021, 11 October 2021, at 8-9, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

33.2. The Privacy Policy has been further revised, removing any perceived Undisclosed Permissions to access users' calendar, location, contact list and social networking.

33.3. [JuanHand] reconfigured JuanHand OLA by providing more visible pop-up prompts when there is an attempt to access users' personal information, subject to the user's acceptance or denial of such access. In case of the latter, no access or collection will take place. These pop-up prompts effective even during user registration and loan application.¹¹³

In relation to this, JuanHand asserted that it similarly corrected and revised the app to comply with the principles of transparency, legitimate purpose, and proportionality.¹¹⁴

Pertaining to the principle of transparency, JuanHand took into consideration the findings of the CID and "[excluded] access to calendar, location, contact list and social networking accounts of the data subject" in its latest Privacy Policy.¹¹⁵ Moreover, it reiterated that it improved the prompts that will enable data subjects to modify their permission or consent and ensured that the users can easily be informed of the changes to the JuanHand app through the "What's New" feature.¹¹⁶

As to the general privacy principle of legitimate purpose, JuanHand argued that its processing of information was compatible with the declared and specified purposes indicated for access to the user's contact list, which is: "(1) to speed up the application process, and (2) to prevent criminals from stealing user's money."¹¹⁷

In addition, JuanHand interposed that since the information is personal information and not sensitive personal information, its collection may still be subject to subsequent consent from the users.¹¹⁸

JuanHand, however, "[conceded] that there were issues in the operation and coding of its application, which failed to provide a means to continue a loan application in cases where a user disagrees

¹¹³ *Id.* at 9.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 12.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 13.

¹¹⁸ Comment on the Fact-Finding Report dated 09 June 2021, 11 October 2021, at 14, *in re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

to provide access to their contacts.”¹¹⁹ Thus, to address the concerns of the CID, it no longer requested access to the user’s contact list in its latest update of the app.¹²⁰

As for the proportionality principle, JuanHand explained that:

[JuanHand], in good faith, [was] of the belief that their questioned action of requesting for the access of a user’s contact list was in proportion to the purpose it declared.

[JuanHand], in requesting for the access to the contact list of its users, [was] hinged on the belief that it was a necessary means to protect legitimate business interests and to serve the interests of the user for credit approval.

Admitting that the purpose for which [JuanHand] requested for the contact list may have been fulfilled by other means in a more ideal scenario, the realities of the situation in the Philippines do not make other options a reasonable means to achieve the purpose sought to be addressed by [JuanHand].¹²¹

...

[T]he target market of the JuanHand application consists of the individuals in the lower economic brackets. As such, these realities were taken into consideration by [JuanHand] in its decision to request for access to the user’s contact data.¹²²

Nevertheless, JuanHand acknowledged the concerns raised by the CID and reiterated that it no longer requests for or uses the contact list of its users.¹²³

Regarding the Loan-Related Transactions Circular, JuanHand stressed that it interpreted the prohibition to access contacts as being qualified by the statement “for use in debt collection or to harass in any way the borrower or his/her contacts.”¹²⁴ It stated that it has never made use of a user’s contact information to harass for debt collection.¹²⁵ Instead, the information was merely used for purposes of identity verification,

¹¹⁹ *Id.*

¹²⁰ *Id.* at 15.

¹²¹ *Id.*

¹²² *Id.* at 16.

¹²³ *Id.*

¹²⁴ Comment on the Fact-Finding Report dated 09 June 2021, 11 October 2021, at 16, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

¹²⁵ *Id.*

credit scoring, and fraud prevention, and it was simply stored in its system as a potential reference source.¹²⁶ In any case, it has now removed its request to access and use its borrowers' contacts.¹²⁷ The supposed violations and concerns of the Commission, therefore, have already been addressed.¹²⁸

JuanHand similarly revised its Service Agreement and removed the contentious provisions raised by the CID to improve compliance with the DPA and its issuances.¹²⁹

Lastly, JuanHand argued that its Corporate Officers and Directors should not be held personally liable because they did not actively participate in, nor by their own gross negligence, allow for the commission of the crime.¹³⁰ As to the first category, it opined that it always acted in good faith when it executed the purported erroneous acts.¹³¹ It even acquired the advice of legal professionals to review the legality of its documents and the process flows of the app since it admits that its own interpretation of the DPA and its issuances, particularly on OLAs, are inadequate.¹³² As to the second category, it asserted that assuming there was negligence, it did not amount to "gross negligence" since JuanHand made efforts to comply with the DPA and its issuances.¹³³

JuanHand prayed that the temporary ban be lifted and that it be allowed to re-deploy the app to the public.¹³⁴

On 17 December 2021, JuanHand filed a Motion to Resolve the imposition of the Temporary Ban on the Processing of Personal Data.¹³⁵ On 10 January 2022, it filed a Supplemental Motion to Resolve the imposition of the Temporary Ban.¹³⁶

¹²⁶ *Id.* at 17.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Comment on the Fact-Finding Report dated 09 June 2021, 11 October 2021, at 22, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* at 23.

¹³⁵ Motion to Resolve, 17 December 2021, *in* *In re: Wefund Lending Corporation and its Responsible Officers*, NPC SS 21-006, (NPC 2022).

¹³⁶ Supplemental Motion to Resolve, 10 January 2022, *in* *In re: Wefund Lending Corporation and its Responsible Officers*, NPC SS 21-006, (NPC 2022).

On 13 January 2022, the Commission issued a Resolution lifting the Temporary Ban issued against JuanHand.¹³⁷ Despite lifting the ban, the Commission, in an Order dated 13 January 2022, enjoined JuanHand to address the issues it raised regarding the version 4.1.1, version 4.2.0, its Privacy Manual, and its Security Incident Management Policy so that it may fully comply with the DPA and the other issuances of the Commission.¹³⁸ Thus, the Commission ordered the parties to submit their respective Memoranda within ten (10) days from the submission of JuanHand's proof of compliance to the mandated changes.¹³⁹

On 28 February 2022, JuanHand filed its Compliance.¹⁴⁰ JuanHand claimed that it only accesses its borrowers' camera or photo gallery for KYC, credit assessment, and fraud prevention at the beginning of loan application processes.¹⁴¹ It specified that both version 4.1.1 and version 4.2.0 of its app have been duly rectified to comply with Section 3(D)(3) of the Loan-Related Transactions Circular on camera permissions.¹⁴² Particularly, the app now contains prompts through its "Close Camera Permission" feature informing its users when they may already turn off or disallow permission to access their cameras or photo galleries.¹⁴³ Thus, upon uploading photos and successfully submitting their loan applications, users may now deny camera access for the app.¹⁴⁴

Additionally, JuanHand submitted its rectified Privacy Manual that includes organizational, physical, and technical measures.¹⁴⁵ It provides for the procedure for appointing data privacy and compliance officers, the conduct of annual privacy trainings, privacy impact assessments, and review of data protection policies.¹⁴⁶ Physical security measures such as storage, limitation of access, and modes of transfer of personal data are included as well as technical security measures involving encryption and authentication processes.¹⁴⁷ Lastly, its submitted Privacy Manual discusses mechanisms in determining the basis for lawful processing of personal data and

¹³⁷ Resolution, 13 January 2022, at 6-7, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

¹³⁸ Order, 13 January 2022, at 9, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

¹³⁹ *Id.* at 10.

¹⁴⁰ Memorandum (for Respondents), 10 March 2022, at 5, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

¹⁴¹ Compliance, 28 February 2022, at 3, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

¹⁴² *Id.* at 2.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 3.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ Compliance, 28 February 2022, at 3, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

mirrors the rights of data subjects in accordance with Sections 12, 13, and 16 of the DPA.¹⁴⁸ It also submitted its rectified Security Incident Management Policy that complies with NPC Circular No. 16-03 (Personal Data Breach Management) in order to prevent or minimize the occurrence of a personal data breach and assure the timely discovery of a security incident.¹⁴⁹ It provides for an incident response procedure in case of security incidents or breaches¹⁵⁰ and for a procedure that complies with the requirements of personal data breach notification.¹⁵¹

On 10 March 2022, JuanHand filed its Memorandum.¹⁵² The CID filed its Memorandum on 16 March 2022.¹⁵³ Both parties reiterated the arguments found in their respective pleadings.

Issue

Whether JuanHand and its Corporate Officers and Directors committed violations of the DPA and the Commission's issuances that warrant a recommendation for prosecution.

Discussion

JuanHand's position mainly asserted that it is no longer liable for violations of the DPA and the Commission's issuances since it already incorporated and made changes to the app to align with the results of the CID's investigation on undisclosed permissions:

There are no longer any 'Undisclosed Permissions' in the JuanHand OLA. Section 16 of the Data Privacy Act is not violated.¹⁵⁴

...

¹⁴⁸ *Id.* at 4.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 5.

¹⁵² Memorandum (for Respondents), 10 March 2022, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

¹⁵³ Memorandum, 16 March 2022, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

¹⁵⁴ Memorandum (for Respondents), 10 March 2022, at 8, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

[JuanHand has] already rectified and revised the [JuanHand] OLA to comply with the principles of transparency, legitimate purpose, and proportionality.¹⁵⁵

...

Thus, as it currently stands, the supposed violations by [JuanHand] and the concerns of the Honorable Commission have already been addressed.¹⁵⁶

...

In any case, [JuanHand's] willingness to abide by all the directives of this Honorable Commission is evident in the rectifications made in the Service Agreement, the JuanHand OLA itself, and the privacy policies.¹⁵⁷

...

Further, in [its] Compliance dated 28 February 2022, [JuanHand] made the following rectifications pursuant to the Honorable Commission's Order dated 13 January 2022[.]¹⁵⁸

This argument is flawed. Rectification after the fact does not cure violations that arose prior to the changes made. This was made clear even in the Commission's 13 January 2022 Order when it stated that:

Compliance with this Order **shall not excuse [JuanHand] and its responsible officers from any violations** of the Data Privacy Act of 2012 and its Implementing Rules and Regulations **that may have resulted from their previous actions before and during the time the Temporary Ban** was in place.¹⁵⁹

The Commission finds that JuanHand committed lapses in its actions before and during the effectivity of the temporary ban. Nevertheless, these lapses, even if taken together, are not sufficient to warrant a recommendation for prosecution.

I. JuanHand's lapses in its actions resulted in a violation of Section 25 of the DPA.

¹⁵⁵ *Id.* at 10.

¹⁵⁶ *Id.* at 17.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 20.

¹⁵⁹ Order, 13 January 2022, at 10, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022). Emphasis supplied.

The root of the CID's contentions stemmed from the alleged undisclosed permissions:

The capabilities of JuanHand's system to read the borrower's calendar events plus confidential information, add or modify calendar events, send email to guests without the owner's knowledge, read borrower's contacts, collect data from contacts and pinpoint the borrower's approximate and precise location through its network and GPS are all unknown to the prospective borrower. The permission information for these capabilities is not shown to the users thru [sic] prompts or permissions when applying for a loan but was discovered by the Technical Team from the google play store and not from the application itself. Thus, the data subjects are uninformed that his or her confidential personal information including that of his or her contacts have been processed in violation of Section 16 of the DPA.¹⁶⁰

...

In the Fact-finding Report, the CID said that the undisclosed permissions in JuanHand's Application also violated the principles of transparency, legitimate purpose, and proportionality, as described in Rule IV, Sections 17 and 18 of the Implementing Rules and Regulations of the DPA[.]¹⁶¹

...

JuanHand's processing of personal information is in violation of Sections 12 and 13 of the Data Privacy Act which requires consent of the data subject prior to the processing. An undisclosed permission did not acquire the consent of the data subject. Thus, the processing of personal data by JuanHand did not adhere to Sections 12 and 13 of the DPA, violating therefore Section 25 of the DPA being unauthorized processing of personal information.¹⁶²

...

Moreover, without a valid consent, or authority under the DPA and other existing laws, processing will be unauthorized in violation of Section 25 of the Data Privacy Act of 2012. Where information is used for purposes other than what the data subject clearly agreed to, or otherwise authorized by law, the further

¹⁶⁰ Memorandum, 16 March 2022, at 2, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022). Emphasis removed.

¹⁶¹ *Id.* at 3.

¹⁶² *Id.* at 7.

processing of the information may be considered processing for unauthorized purpose.¹⁶³

JuanHand did not refute the results of the CID's investigation regarding its undisclosed permissions. Rather, to address this point, it admitted that its app does "read the borrower's calendar events and add or modify calendar events."¹⁶⁴ JuanHand's arguments instead attempted to address the conclusions the CID sought to derive from these findings of fact by arguing that it considers the accessing and modifying of its borrower's calendar as "legitimate and proportional to the purpose stated in the Service Agreement. [...] [t]herefore, [it] consider[s] that when users give consent to the Service Agreement, users are materially informed [of] the kind of personal information [that] shall be processed in compliance with [S]ection 16(a) of the DPA and have given consent to the above functions."¹⁶⁵

Considering the foregoing, it is evident that JuanHand committed lapses.

The results of the CID's investigation on JuanHand's Permission Information demonstrated that the system can do the following:

1. read the borrower's calendar events plus confidential information;
2. add or modify calendar events;
3. send email to guests without the owner's knowledge;
4. read borrower's contacts;
5. collect data from contacts; and
6. pinpoint the borrower's approximate and precise location through its network and GPS.¹⁶⁶

Not all permissions, however, were indicated in the Service Agreement, particularly the permission to access a borrower's calendar events and confidential information as well as read and modify the calendar events.¹⁶⁷ This is an erroneous oversight because "it is the Service Agreement that potential borrowers are asked to

¹⁶³ *Id.*

¹⁶⁴ Position Paper, 12 August 2021, at 5, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

¹⁶⁵ *Id.*

¹⁶⁶ Fact-Finding Report, 09 June 2021, at 4-5, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

¹⁶⁷ *See* Supplemental Report, 31 May 2021, Annex A (JuanHand User Agreement Web), *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

consent to and is the one that governs the relationship between the borrower and JuanHand.”¹⁶⁸ Moreover, as emphasized by the Commission in its 12 August 2021 Order:

JuanHand does not have a clear understanding of the lawful criteria for processing under the DPA that it is relying on. As reflected in its Position Paper, JuanHand considers access to and modification of a user’s calendar as legitimate and proportional to the purpose stated in the Service Agreement. However, JuanHand is unclear on which specific purpose it pertains to. JuanHand subsequently states that ‘when users give consent to the Service Agreement, users are materially informed [of] the kind of personal information [that] shall be processed in compliance with [S]ection 16(a) of the DPA and [users] have given consent to the above functions.’ This statement is, at best, confusing.

The primary contract entered into by JuanHand and its users is a loan. When entering a loan, the borrower signifies consent to the purposes necessary to deliver the services contemplated in the contract, this necessarily includes the processing of relevant personal information. JuanHand, in including the privacy policies in its Service Agreement and in creating the revised Privacy Policy, acknowledges that its main basis for processing personal information is consent. **In this case, however, for matters where it did not request consent from its data subjects, JuanHand erroneously attempts to fill in the gaps by conveniently citing legitimate interest as its basis in processing their personal information.**

According to JuanHand, it considers accessing and modifying a user’s calendar as legitimate and proportional to the purpose in the Service Agreement[.]

...

In the next provision, JuanHand declares that users are ‘materially informed’ of the kind of personal information it processes when users give consent[.]

...

The privacy provisions in the Service Agreement, however, do not mention access to the user’s phone calendar. In fact, the request for permission to access and modify the calendar is not included among the disclosed permissions JuanHand requests from its users, as presented in Annex 2 of the Position Paper. The access and modification of the calendar that JuanHand claims to

¹⁶⁸ Order, 12 August 2021, at 9, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

be covered under its legitimate interest is not included in the categories of personal information that will be collected and processed, as set out in the Service Agreement. As a result, the access and modification of the calendar could not have been disclosed to the data subjects. JuanHand neither informed its borrowers of the additional personal information that will be processed nor acquired their consent to such processing. **Having failed to inform its borrowers of such processing, much less acquired their consent, JuanHand cannot belatedly use legitimate interest to cure this defect especially since its borrowers could not have expected this at the time they gave their consent.**¹⁶⁹

Aside from this, the CID also pointed out that the clause in the Service Agreement regarding publication is violative of the DPA and its issuances.¹⁷⁰ Sections K(4)(c) and (d) of the Service Agreement provide:

c. After the repayment is overdue, [JuanHand] as the Facilitator is entitled to disclose to the Investor the personal information of the Borrower, and to or obtain by the Facilitator through this Agreement and other lawful means and include the personal information submitted by the Borrower or collected by [JuanHand] into the blacklist of the [JuanHand] Website and the national and local personal credit information systems. The Facilitator is also entitled to share with any third parties the personal information of the Borrower, which was submitted by the Borrower or collected by the Facilitator in public domain, so that the Facilitator and the third parties can collect the overdue amount and such personal information can be used for the approval of other loan applications made by the Borrower. All the legal liabilities shall be borne by the Borrower and [JuanHand] shall not take any responsibilities.

d. When the Borrower is overdue for payment, [JuanHand] may publish the personal information of such user for the purpose of collecting debt. [JuanHand] shall not be held liable.¹⁷¹

JuanHand contended that the limitation of liability does not pertain to the DPA, but it is only connected to its publication in case of delinquent users and where payment is overdue.¹⁷² It argued that the contentious provision should be read in conjunction with the provision of the

¹⁶⁹ *Id.* at 9-11. Emphasis supplied.

¹⁷⁰ Fact-Finding Report, 09 June 2021, at 11 & 13, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

¹⁷¹ Supplemental Report, 31 May 2021, Annex A (JuanHand User Agreement Web) at 9, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022). Emphasis supplied.

¹⁷² Memorandum (for Respondents), 10 March 2022, at 19, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

Service Agreement pertaining to disclosure in relation to credit information systems.¹⁷³ The Commission previously pointed out that the publication is accompanied by a categorical statement, thereby putting into question its alleged non-limitation of liability:

The Commission understands that JuanHand's disclosure of the personal information of delinquent users to the [Credit Information Corporation] is pursuant to Section K(4)(c) of the Service Agreement[.]

...

However, Section K(4)(d) of the Service Agreement allows JuanHand to 'publish the personal information of such user for the purpose of collecting debt'. Further, JuanHand categorically states that it 'shall not be held liable' for such publication.¹⁷⁴

Lastly, while the temporary ban was in effect, the Commission received several reports from JuanHand users who received various messages from its Collection Department containing the DDL of the app.¹⁷⁵ Upon investigation, the EnD was able to download the JuanHand app through the provided DDL.¹⁷⁶ Thus, on 17 September 2021, the EnD sent a letter to JuanHand requiring it to explain the foregoing incident.¹⁷⁷

On 08 October 2021, JuanHand responded to the EnD's letter.¹⁷⁸ It explained that the DDLs were inadvertently sent in an SMS and email as part of an automatic process which transmits repayment reminders to existing JuanHand users.¹⁷⁹ It reiterated this in its Memorandum, stating that:

100.1. The dissemination of the DDL was done through **automatic, system-generated repayment reminder SMS and emails**, and therefore was done inadvertently, with no intention to violate the Temporary Ban. The DDLs were inadvertently sent through system-generated repayment reminders containing a single hyperlink or DDL [...], which automatically redirects users

¹⁷³ *Id.*

¹⁷⁴ Order, 12 August 2021, at 11, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

¹⁷⁵ Enforcement Division Letter of Compliance with Order dated 12 August 2021 in NPC SS 21-006 entitled "*In re: Wefund Lending Corporation (JuanHand)*", 16 September 2021, at 2, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Reply and Explanation to the National Privacy Commission Enforcement Division Letter dated 16 September 2021, 08 October 2021, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

¹⁷⁹ *Id.* at 3.

to the latest version of the JuanHand OLA, regardless of changes and updates to the same.

100.2. Upon becoming aware of the incident, [JuanHand] immediately made efforts to rectify the same.¹⁸⁰

Thus, the Commission finds that JuanHand violated Section 25 of the DPA or Unauthorized Processing of Personal or Sensitive Personal Information.

Unauthorized Processing of Personal or Sensitive Personal Information is committed when:

1. The perpetrator processed the information of the data subject;
2. The information processed was personal information or sensitive personal information; and
3. The processing was done without the consent of the data subject, or without being authorized under the DPA or any existing law.¹⁸¹

All three (3) requisites are present here. The circumstances when taken together substantially demonstrate that JuanHand processed the personal information of its data subjects, particularly their calendar events, without their consent.

On the first requisite, JuanHand processed information of its data subjects. Section 3 of the DPA defines processing as follows:

(j) Processing refers to any operation or any set of operations performed upon personal information including, but not limited to, the collection, recording, organization, storage, updating or modification, retrieval, consultation, use, consolidation, blocking, erasure or destruction of data.¹⁸²

In its Position Paper dated 12 August 2021, JuanHand stated that it “[does] also **read** the borrower’s calendar events and **add or modify**

¹⁸⁰ Memorandum (for Respondents), 10 March 2022, at 23, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022). Emphasis supplied.

¹⁸¹ NPC 19-134, 10 December 2021, at 12 (NPC 2021) (unreported).

¹⁸² Data Privacy Act of 2012, § 3 (j).

calendar events.”¹⁸³ The first requisite of processing was admitted by JuanHand.

As for the second requisite, the information that JuanHand processed is personal information. Section 3 of the DPA defines personal information:

(g) Personal information refers to 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.¹⁸⁴

In its Position Paper dated 12 August 2021, JuanHand admitted that it considered the user’s calendar as a “kind of personal information.”¹⁸⁵ Further, it stated that:

We consider that accessing and modifying user’s calendar is legitimate and proportional to the purpose stated in the Service Agreement for two reasons:

- (i) Credit Analysis and Scoring: by accessing the calendar, we seek to identify due dates of other loans or payment obligations of the users to determine whether or not to provide loan services, and if so, his/her credit limits;
- (ii) Due Day Reminder: by adding due date to the users’ calendar, it would be easier for the users to apprehend the due date and, thus, repayment obligation.

Therefore, we consider that when users give consent to the Service Agreement, users are materially informed the kind of personal information shall be processed in compliance with section 16(a) of the DPA and have given consent to the above functions.¹⁸⁶

As mentioned, JuanHand accessed and used the user’s calendar for credit analysis and scoring and payment reminders. These information allow it to “identify due dates of other loans or payment obligations of the users.”¹⁸⁷ Clearly, the identity of the borrower can be reasonably

¹⁸³ Position Paper, 12 August 2021, at 5, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022). Emphasis supplied.

¹⁸⁴ Data Privacy Act of 2012, § 3 (g).

¹⁸⁵ Position Paper, 12 August 2021, at 5, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

and directly ascertained through the information contained in the calendar. The calendar information, thus, is personal information under the DPA.

As for the third requisite, JuanHand processed personal information without the consent of the data subjects or without lawful basis under the DPA or any existing law.

The CID discussed in its FFR that:

After a thorough search, the CID Technical Team found 'JuanHand's Permission Information' (Annex 'B') revealing that JuanHand's system, **can do** the following:

1. read the borrower's calendar events plus confidential information;
2. add or modify calendar events;
3. send email to guests without the owner's knowledge;
4. read borrower's contacts;
5. collect data from contacts; and
6. pinpoint the borrower's approximate and precise location through its network and GPS.¹⁸⁸

The CID, through its technical investigation, discovered that during the time it conducted the investigation, JuanHand's app was able to utilize the abovementioned permissions. Apart from that, prior to the CID's downloading and installation of the app, the permissions required by the app were outlined in the Google Play Store.¹⁸⁹

- read calendar events plus confidential information;
- add or modify calendar events and send email to guests without owner's knowledge;
- read your contacts;
- approximate location (network-based); and
- precise location (GPS and network-based).¹⁹⁰

¹⁸⁸ Fact-Finding Report, 09 June 2021, at 4-5, *in re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022). Emphasis supplied.

¹⁸⁹ *Id.* at 2.

¹⁹⁰ Technical Report, 17 May 2021, at 5 (Annex B), *in re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

As previously discussed, however, JuanHand's Service Agreement does not indicate all of the abovementioned permissions outlined in the Google Play Store and those discovered by the CID during its technical investigation.¹⁹¹ The Service Agreement did not inform the data subjects that it can and does access, read, and modify their calendar events and other confidential information.¹⁹²

Thus, the Commission finds that JuanHand's processing of personal information was without consent of the data subjects.

The CID was able to prove, through its technical investigation, that there were undisclosed permissions not mentioned in the Service Agreement. This is a violation of the general privacy principle of transparency, which requires the Personal Information Controller (PIC) to ensure that the data subject is aware of the nature, purpose, and extent of the processing of his or her personal data.¹⁹³ The principle of transparency similarly requires that these materials be easily accessible and understandable by the data subjects and should be in clear and plain language.¹⁹⁴ The requirement to use clear and plain language means that information should be provided in as simple a manner as possible.¹⁹⁵ In NPC 19-450, the Commission emphasized the "clear and plain language" requirement:

The requirement to use clear and plain language does not mean using layman's terms to substitute technical words at the risk of not capturing the complex concepts they represent. Rather, this requirement means that information should be provided in as simple a manner as possible, avoiding sentence or language structures that are complex. **The information provided should be concrete and definitive; it should not be phrased in abstract or ambivalent terms or leave room for different interpretations** such as in the above-cited provision which uses the word 'any' several times, as well as wordings like 'including but not limited to'.¹⁹⁶

In NPC 19-498, the Commission held that "vague, overbroad, and confusing language cannot be said to comply with the requirements of

¹⁹¹ See Supplemental Report, 31 May 2021, Annex A (JuanHand User Agreement Web), *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

¹⁹² See *id.*

¹⁹³ Rules and Regulations Implementing the Data Privacy Act of 2012, § 18.

¹⁹⁴ *Id.*

¹⁹⁵ See *JRG v. CXXX Lending Corporation*, NPC Case No. 19-450, 09 June 2020, at 6, available at https://www.privacy.gov.ph/wp-content/uploads/2022/01/Decision_NPC-19-450-JRG-v.-CXXX.pdf (last accessed 30 May 2022).

¹⁹⁶ *Id.* Emphasis supplied.

the transparency principle.”¹⁹⁷ Statements fail to satisfy the transparency principle if data subjects are not informed of the nature, purpose, and extent of the processing that the PIC is permitted to undertake.¹⁹⁸ The Commission explained as follows:

This vague, overbroad, and confusing language cannot be said to comply with the requirements of the transparency principle and its **objective of providing meaningful information to data subjects to enable them to understand the purpose, scope, nature, and extent of processing of their personal information.** Taken plainly, what Respondent obtained was blanket consent to process the information they acquired from Complainant and not **informed consent to process specific information for a specified and limited purpose.**¹⁹⁹

A PIC, therefore, should inform the data subjects that it will process particular personal information for a specific and limited purpose.²⁰⁰

With these, it can be seen that JuanHand violated the principle of transparency. To recall, “it is the Service Agreement that potential borrowers are asked to consent to and is the one that governs the relationship between the borrower and JuanHand.”²⁰¹ In failing to include certain employed permissions in the Service Agreement, JuanHand did not sufficiently inform its data subjects of its processing pertaining to the undisclosed permissions in a manner that enables them to understand the purpose, scope, nature, and extent of processing of their personal information.²⁰²

In effect, this violation of the general privacy principle of transparency resulted in a violation of Section 25 of the DPA. Since the data subjects were not informed in a way that they can properly understand the specific nature, purpose, and extent of the processing the PIC is permitted to undertake, they were not able to make an informed decision regarding the processing of their personal information. Thus, there can be no valid consent in JuanHand’s processing of their personal information relating to the undisclosed permissions.

¹⁹⁷ NPC Case No 19-498, 09 June 2020, at 8 (NPC 2020) (unreported).

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* Emphasis supplied.

²⁰⁰ *See id.*

²⁰¹ Order, 12 August 2021, at 9, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

²⁰² *See* NPC Case No 19-498, 09 June 2020, at 8 (NPC 2020) (unreported).

JuanHand, in its Position Paper, admitted that the undisclosed permissions were being executed despite its glaring absence in the Service Agreement:

[W]e do also read the borrower’s calendar events and add or modify calendar events. We consider that accessing and modifying user’s calendar is legitimate and proportional to the purpose stated in the Service Agreement[.]

...

Therefore, we consider that when users give consent to the Service Agreement, users are materially informed the kind of personal information shall be processed in compliance with section 16(a) of the DPA and have given consent to the above functions.²⁰³

As previously discussed, JuanHand should have informed its data subjects that it will process their personal information for a specific and limited purpose. It cannot argue that its borrowers are materially informed since it did not validly acquire its data subjects’ consent specific to the nature, purpose, and extent of the particular processing activity.

The Commission reminds PICs that regardless of the basis of processing, the principle of transparency dictates that information regarding the nature, purpose, and extent of the processing of personal information still has to be provided to the data subject.

Moreover, a perusal of JuanHand’s argument above shows that it relied on consent and contract for its processing. Nevertheless, it attempted to argue that “accessing and modifying user’s calendar is **legitimate and proportional to the purpose** stated in the Service Agreement.”²⁰⁴ To recall, it stressed that there is more than one allowable basis for processing in this case, such as consent, contract of loan, and legitimate interest pursued as a lender.²⁰⁵ Therefore, it alleged that it has pursued “legitimate interests and purposes” in processing the personal information of its users.²⁰⁶

²⁰³ Position Paper, 12 August 2021, at 5, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022). Emphasis supplied.

²⁰⁴ *Id.* Emphasis supplied.

²⁰⁵ Comment on the Fact-Finding Report dated 09 June 2021, at 5, 11 October 2021, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

²⁰⁶ *Id.* at 6.

The Commission stresses that legitimate interest cannot be used to circumvent data subject rights. It cannot justify improper processing that has already occurred on the basis of the lawful criteria of consent or contract. Given that JuanHand relied on consent as its lawful criteria for processing, then it must show and prove that it obtained proper and specific consent.

This is not to say that legitimate interest cannot apply alongside consent or contract. Legitimate interest can apply in a contract or in a processing related to consent if it can justify the processing of things already agreed upon by the parties, which can be determined by the type of contract entered into, the relationship of the parties, and other similar circumstances. Thus, legitimate interest can be used to fill in gaps in the contract only if the processing involves something that the data subject can reasonably expect from the terms stated in the contract.

This is not the case for JuanHand since access and modification of a borrower's calendar is not something that a user would reasonably expect to fall under the terms stated in JuanHand's Service Agreement, particularly:

K. Privacy

...

2. Source of information

...

b. In addition to the information provided to JuanHand by the User voluntarily, User agrees that Juanhand and its partners to collect and verify the User's information, including, but not limited to the following manner:

- i. User's information collected by Juanhand and its cooperating party.
- ii. User's information authenticated by the third party.
- iii. information relevant to such User collected by automatically tracking by Juanhand based on the User's behavior on this Website.
- iv. information related to personal communication (including, but not limited to, contact list, geographical location, device identification number, social networking profiles) provided or

authorized by the User, or communication information relating to the activities and logging in by the User provided to Juanhand by other User or third party, Juanhand can collect this information in the User's file.

v. Other information related to the use of Juanhand services by the User.

vi. Juanhand will collect your Facebook platform information through your authorization. Including but not limited to: username, user ID, registered email, gender, etc.²⁰⁷

To do something entirely different and not covered by the Service Agreement is problematic and unfair since data subjects will be made to believe that the processing will not go beyond the terms to which they agreed; but in reality, the PIC crosses the boundary in processing personal information. Thus, JuanHand cannot use legitimate interest in the alternative to fill in the gaps of its contract.

Given the foregoing, JuanHand has no lawful basis under the DPA or any existing laws to process the personal information of its data subjects in relation to the undisclosed permissions.

Taking all the foregoing into consideration, JuanHand violated Section 25 of the DPA.

II. Liability of responsible officers based on Section 34 of the DPA.

The DPA imposes criminal penalties on specific acts, which are imposed by courts of law after the conduct of a criminal trial.²⁰⁸ Upon a finding of a violation, the Commission may recommend to the Department of Justice the prosecution and imposition of penalties on the violations enumerated under the DPA.²⁰⁹ These unlawful acts provided in Sections 25 to 32 are unauthorized processing of personal or sensitive personal information, processing personal or sensitive personal information for unauthorized purposes, accessing of personal or sensitive personal information, unauthorized access or intentional breach, improper disposal of personal or sensitive personal information, concealment of security breaches involving sensitive personal information, malicious disclosure, and unauthorized

²⁰⁷ Supplemental Report, 31 May 2021, Annex A (JuanHand User Agreement Web) at 7-11, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

²⁰⁸ Data Privacy Act of 2012, chapter VIII.

²⁰⁹ *Id.* § 7 (i).

disclosure.²¹⁰ If the PIC or Personal Information Processor (PIP) is a juridical person, then the penalties are imposed on its responsible officers.²¹¹

Corporations and other juridical entities cannot be prosecuted for crimes under Philippine law.²¹² It is an established principle in criminal law that:

Only natural persons can be the active subject [the criminal] because of the highly personal nature of the criminal responsibility.

Since a felony is a punishable act or omission which produces or tends to produce a change in the external world, it follows that **only a natural person can be the active subject [the criminal] of a crime, because he alone by his act can set in motion a cause or by his inaction can make possible the completion of a developing modification in the external world.**²¹³

Specific to violations committed by a corporation, the Revised Corporation Code provides that:

Section 171. *Liability of Directors, Trustees, Officers, or Other Employees.* If the offender is a corporation, the penalty may, at the discretion of the court, be imposed upon such corporation and/or upon its directors, trustees, stockholders, members, officers, or employees **responsible for the violation or indispensable to its commission.**²¹⁴

Jurisprudence provides that corporations have a separate and distinct personality from its officers:

Bicol Gas is a corporation. As such, it is an entity separate and distinct from the persons of its officers, directors, and stockholders. It has been held, however, that **corporate officers or employees, through whose act, default or omission the**

²¹⁰ *Id.* §§ 25-32.

²¹¹ *Id.* § 34.

²¹² See *People v. Tan Boon Kong*, G.R. L-35262 (1930).

²¹³ LUIS B. REYES, *THE REVISED PENAL CODE, CRIMINAL LAW, BOOK 1 ARTICLES 1-113 505* (2012). Emphasis removed. Emphasis supplied.

²¹⁴ An Act Providing for the Revised Corporation Code of the Philippines [REVISED CORPORATION CODE], Republic Act No. 11232, § 171 (2019). Emphasis supplied.

corporation commits a crime, may themselves be individually held answerable for the crime.²¹⁵

Thus, as held by the Supreme Court, “[a] corporation can act only through its officers and agents, and where the business itself involves a violation of the law, the correct rule is that all who participate in it are liable.”²¹⁶ Certain special laws provide for the particular officers who shall be held responsible for corporate crimes.²¹⁷ In the DPA, this is specified in Section 34.

Therefore, Section 34 supplies the gap in Sections 25 to 32 of the DPA by specifying that the officers of erring corporations are the natural persons that will be held responsible for such violations and will be the accused in the criminal case that will be filed.

The Commission emphasizes that, for juridical entities, a violation of Section 25 does not automatically result in a recommendation for prosecution. Rather, there is a need to identify the proper responsible officers that shall be the accused in the criminal case. With this, the standard for the identification of responsible officers is provided by Section 34 of the DPA. Section 34, therefore, adds another layer for violations of Sections 25 to 32 when juridical entities are involved.

Section 34 of the DPA explicitly states that a responsible officer can be subject to the imposable penalties in two instances: (1) participation in the commission of the crime, or (2) allowing the commission of the violation through gross negligence:

Section 34. *Extent of Liability.* If the offender is a corporation, partnership or any juridical person, the penalty shall be imposed upon the responsible officers, as the case may be, **who participated in, or by their gross negligence**, allowed the commission of the crime. If the offender is a juridical person, the court may suspend or revoke any of its rights under this Act. If the offender is an alien, he or she shall, in addition to the penalties herein prescribed, be deported without further proceedings after serving the penalties prescribed. If the offender is a public official or employee and lie or she is found guilty of acts penalized under Sections 27 and 28 of this Act, he or she shall, in addition to the penalties prescribed herein, suffer

²¹⁵ *Espiritu Jr. v. Petron Corporation*, G.R. No. 170891 (2009). Emphasis supplied.

²¹⁶ *People v. Tan Boon Kong*, G.R. L-35262 (1930).

²¹⁷ JOSE R. SUNDIANG, SR. & TIMOTEO B. AQUINO, REVIEWER ON COMMERCIAL LAW 60 (2019).

perpetual or temporary absolute disqualification from office, as the case may be.²¹⁸

The Commission has previously expounded on an officer's liability:

The DPA is clear, however, that the liability of the responsible officers in cases where the offender is a corporation does not rely on active participation alone. Gross negligence is explicitly stated in the DPA as a ground for criminal liability.²¹⁹

In relation to this, the Commission stresses that the clause "who participated in, or by their gross negligence" should be viewed in relation to the acts of the responsible officers that reasonably caused the violation, without which the violation would not have occurred. Ultimately, however, this shall be applied on a case-to-case basis.

Thus, the Commission takes this opportunity to draw a distinction between the different sections in Chapter VIII (Penalties) of the DPA, namely Sections 25 to 32 and Section 34.

The evidence required for Sections 25 to 32 of the DPA is substantial evidence demonstrating that all the elements of the respective violations are present. Meanwhile, the evidence necessary to establish Section 34 of the DPA is substantial evidence proving that the specific responsible officers reasonably caused the violation by their participation or allowed the commission of the violation through their gross negligence.

III. The case should be dismissed for lack of substantial evidence supporting a recommendation for prosecution based on Section 34 of the DPA.

The CID argued that the undisclosed permissions show that "there is sufficient legal and factual basis" for the Commission to hold

²¹⁸ Data Privacy Act of 2012, § 34. Emphasis supplied.

²¹⁹ In Re: FLI Operating ABC Online Lending Application, NPC 19-910, 17 December 2020, at 35, available at <https://www.privacy.gov.ph/wp-content/uploads/2021/02/NPC-19-910-In-re-FLI-Decision-LYA-Final-pseudonymized-17Dec2020.pdf> (last accessed 30 May 2022).

JuanHand's Corporate Officers and Directors, as the responsible officers, liable.²²⁰ To further bolster its claim, it posited that:

First, Respondent Wefund admitted all the allegations in the Fact-finding Report. It in fact offered to rectify its shortcomings identified in the Order and FFR and undertook to implement immediate rectification and remedial actions. Finally, Wefund warranted that it shall also remain fully cooperative and supportive with the NPC in the further investigation and will be open to promptly rectify any issues and adopt any recommendation made by the NPC.

Second, the responsible officers did not file any comment to the Fact-Finding Report as ordered by the Commission. In Wefund's Position Paper, no defense was interposed as to why the responsible officers should not be penalized if found guilty of the violations of the DPA.²²¹

In arguing that the Corporate Officers and Directors of JuanHand are liable, the CID discussed the abovementioned arguments to harp on Section 34 which states that "liability shall be imposed upon the Board of Directors, as responsible officers, who participated in, or by their gross negligence, allowed the commission of the crime[.]"²²²

In administrative proceedings, however, jurisprudence consistently maintains that: "The burden to establish the charges rests upon the complainant. [...] **The respondent is not even obliged to prove his exception or defense.**"²²³

In line with this, the Commission held in NPC 19-465 that:

[T]he Commission cannot recommend the criminal prosecution of the responsible officers of [Respondent] based on the weakness of their defense.

Ultimately, it is [Complainant] that bears the burden of proving the allegations in her Complaint with substantial evidence. Jurisprudence is settled that **if she 'fail[s] to show in a satisfactory manner the facts upon which [her] claims are**

²²⁰ Memorandum, 16 March 2022, at 9, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022); *See* Supplementary Fact-Finding Report (with Application for Issuance of Temporary Ban on the Processing of Personal Data), 05 July 2021, at 2-3, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

²²¹ Memorandum, 16 March 2022, at 9, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

²²² *Id.*

²²³ *National Bureau of Investigation v. Conrado M. Najera*, G.R. No. 237522 (2020). Emphasis supplied.

based, the [respondent is] not obliged to prove [its] exception or defense.’²²⁴

Thus, the Commission stresses that, contrary to the CID’s argument, the lack of any defense presented by JuanHand on possible violations committed by its Corporate Officers and Directors is not enough basis to recommend them for prosecution.

In any case, there is no evidence on record, despite the investigation conducted and allegations made by the CID, that sufficiently establishes in any way that JuanHand’s Corporate Officers and Directors (1) participated in or (2) exercised gross negligence in allowing the commission of the crime.

To reiterate, a recommendation for prosecution under Section 34 requires substantial evidence showing that the responsible officers committed acts that reasonably caused the violation, without which the violation would not have occurred, or allowed its commission through their gross negligence.

In this case, there is nothing on record demonstrating that JuanHand’s Corporate Officers and Directors either (1) participated in the violation or (2) by their gross negligence, allowed the commission of the crime in order to hold them liable based on Section 34 of the DPA. The lapses pointed out are sufficient to demonstrate that JuanHand violated Section 25 of the DPA. The lapses themselves do not, however, automatically prove that the elements necessary to hold Corporate Officers and Directors liable based on Section 34 of the DPA are present. Given this, the Commission finds that the lapses in this case are not tantamount to substantial evidence required to warrant a recommendation for prosecution under Section 34 of the DPA.

There is no substantial evidence to prove that JuanHand’s Corporate Officers and Directors participated in the violation. The term “participated in,” as found in Section 34 of the DPA, requires that the responsible officers committed acts that reasonably caused the violation, without which the violation would not have occurred. As such, the instance of “participated in” contemplates a situation wherein the officers and employees that will be recommended for

²²⁴ NPC 19-465, 03 March 2022, at 10 (NPC 2022) (unreported). Emphasis supplied.

prosecution are “responsible” for and the root cause of the violation of the DPA in such a way that if they had not committed certain acts, then the violation would not have transpired. Examples of this instance cover situations wherein the responsible officer directs the execution of the act resulting in the violation or through his acts, reasonably caused the commission of the violation without which such violation would not have occurred. Thus, a sense of causation is essential when determining if the responsible officers may be held liable based on participation.

Given the foregoing, the Commission finds that there is no substantial evidence proving that JuanHand’s Corporate Officers and Directors committed any acts that reasonably caused its violation of Section 25 of the DPA. In the absence of substantial evidence, JuanHand’s Corporate Officers and Directors cannot be held liable based on participation in Section 34 of the DPA.

As for gross negligence, the Commission finds that the second instance of Section 34 is similarly not present in this case. It is settled that “he who alleges has the burden of proving his allegation with the requisite quantum of evidence.”²²⁵ Absent substantial proof, an allegation of gross negligence cannot be presumed. Here, there is no substantial evidence on record demonstrating that JuanHand’s Corporate Officers and Directors by their gross negligence, allowed the commission of the crime.

The Supreme Court defines gross negligence as follows:

[G]ross negligence [...] refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, **not inadvertently but wilfully and intentionally, with a conscious indifference** to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty.²²⁶

The oversights committed by JuanHand do not demonstrate that its Corporate Officers and Directors refused to perform their necessary duties under the DPA. Moreover, the acts of JuanHand to rectify its

²²⁵ Tacis v. Shields Security Services, Inc., G.R. No. 234575 (2021).

²²⁶ Securities and Exchange Commissioner v. Commission on Audit, G.R. No. 252198 (2021). Emphasis supplied.

mistakes upon notification by the Commission show its willingness to comply with its mandated duties.

Pertaining to the DDLs, after being alerted of the incident, JuanHand immediately removed the DDLs from its repayment reminders and ordered that the sent DDLs be inaccessible and deactivated.²²⁷ Furthermore, it sent messages to its users that were able to use, access, or download the app during the period of the temporary ban's effectivity, particularly stating that the app is "currently unavailable for downloading in compliance [with the] National Privacy Commission's order. If you have received Juan[H]and download links before, please do not access it anymore."²²⁸

This was verified by the EnD when it declared that:

The alleged accessible links mentioned in the reports to the CID included in the automated messages through the following links are also no longer working, meaning, **the mobile app is no longer accessible through these links there were reported after the effectivity of the temporary ban[.]**²²⁹

As for the app itself, JuanHand has revised it by (1) removing access to users' calendar, location, contact list and social networking profiles; (2) incorporating more visible pop-up prompts during the registration and loan application procedure when there is an attempt to access or use its users' personal information that would allow users to ask for or modify the permissions that they have granted; and (3) adding a "What's New" feature that allows data subjects to be easily informed of the changes in the app.²³⁰

These were confirmed by the EnD in its assessment. It found that versions 4.1.1 and 4.2.0 of the app are no longer functional and are now unusable; rather, old users are prompted to update to the app's latest version 5.0.0.²³¹ Particularly, as regards the iOS version:

²²⁷ Reply and Explanation to the National Privacy Commission Enforcement Division Letter dated 16 September 2021, 08 October 2021, at 4, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

²²⁸ *Id.* at 6. Emphasis removed.

²²⁹ Enforcement Division Memorandum, 03 November 2021, at 3, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022). Emphasis supplied.

²³⁰ Memorandum (for Respondents), 10 March 2022, at 9 & 13, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

²³¹ Enforcement Division Enforcement Assessment Report, 28 April 2022, at 3, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

[W]hile there are still no prompts giving the user permission to allow the application to access the phone's contact list, it has an option for manual entry of references. The iOS version now has two options wherein users can input their contact references. First, users can manually enter their contact references. Second, users can choose their contact references from their contact list. According to [JuanHand], this is solely for the purpose of convenience of the users and the application cannot "read" the entire contact lists of users.

...

[T]his claim was verified by EnD. In the generated iOS Privacy Report, it was **confirmed that the JuanHand OLA does not have permission to access the users' contacts.**²³²

Further, it created a separate Privacy Policy excluding access to calendar, location, contact list and social networking accounts of the data subject.²³³ Its Service Agreement, on the other hand, removed all the alleged contentious provisions pointed out by the CID in order to improve compliance with the DPA and its issuances.²³⁴

As regards the alleged violations of the Loan-Related Transactions Circular pointed out by the CID, JuanHand asserted that:

[I]n no instance has it ever used the contact information acquired from the users' contact list as a means of harassment in the process of debt collection.

...

That said, in order to cooperate, comply, and address the concerns of the CID, Respondent WeFund no longer requests for access to the user's contacts list.²³⁵

The Commission takes this opportunity to clarify the Loan-Related Transactions Circular, specifically Section 3(D)(4), which states that:

Access to contact details in whatever form, such as but not limited to phone contact list or e-mail lists, the harvesting of

²³² *Id.* Emphasis supplied.

²³³ Memorandum (for Respondents), 10 March 2022, at 12, *in* *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS Case No. 21-006 (NPC 2022).

²³⁴ *Id.* at 17.

²³⁵ *Id.* at 15.

social media contacts, and/or copying or otherwise saving these contacts for use in debt collection or to harass in any way the borrower or his/her contacts, are prohibited. In all instances, online lending apps must have a separate interface where borrowers can provide character references and/or co-makers of their own choosing.²³⁶

The Commission emphasizes that the phrase “access to contact details in whatever form” should be read in the context of the qualifying phrase contained within the same paragraph, “for use in debt collection or to harass in any way [...] are prohibited.”²³⁷ Thus, it is not the collection of contacts nor its access *per se* that is prohibited, especially since there are instances when the collection or processing of contacts falls under lawful processing. Rather, what the Circular strictly prohibits is the utilization of these contacts to unduly burden borrowers when they are used for purposes of debt collection and harassment.

The Loan-Related Transactions Circular similarly contains rules on camera permissions. JuanHand has addressed the issues surrounding camera permissions of both version 4.1.1 and version 4.2.0.²³⁸ Through the “Close Camera Permission” feature, users are now prompted that they may turn off or disallow permission to access their cameras or photo galleries upon uploading their pictures successfully and submitting their loan application.²³⁹ The EnD has validated that this feature is present and functioning.²⁴⁰

Lastly, it has now provided for organizational, physical, and technical measures in both its revised Privacy Policy and Security Incident Management Policy.²⁴¹ As confirmed by the EnD in its assessment, these now align with the DPA and the Commission’s issuances.²⁴²

The Commission notes that, in addition to JuanHand’s willingness to comply with its Orders, its voluntary acts of changing key members of

²³⁶ National Privacy Commission, Guidelines on the Processing of Personal Data for Loan-Related Transactions, Circular No. 01, Series of 2020 [NPC Circ. No. 20-01], § 3 (D)(4) (28 January 2021).

²³⁷ *Id.*

²³⁸ Memorandum (for Respondents), 10 March 2022, at 20, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

²³⁹ *Id.* at 20-21.

²⁴⁰ Enforcement Division Enforcement Assessment Report, 28 April 2022, at 4, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

²⁴¹ Memorandum (for Respondents), 10 March 2022, at 21, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

²⁴² Enforcement Division Enforcement Assessment Report, 28 April 2022, at 2, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

its management team and legal counsel are inconsistent with gross negligence.

JuanHand, in its Supplemental Motion to Resolve, stated that it has now “initiated the appointment of a more senior and experienced legal and compliance manager in the management team as the new data privacy officer in due course, to better oversee the compliance and protection of its users’ data privacy.”²⁴³ The Commission considers the efforts of JuanHand in diligently complying with its obligations as a PIC by appointing more experienced members to its managerial team in order to better protect the rights of its data subjects.

Moreover, the Commission recognizes its change in counsel as a badge of its willingness to comply with the DPA and the Commission’s issuances. JuanHand, through its former counsel,²⁴⁴ attempted to rectify the alleged errors pointed out by the CID by preparing and attaching to its Position Paper a standalone Privacy Policy that was independent from the Service Agreement and that complied with the DPA.²⁴⁵ Despite the rectifications made, the Commission was unconvinced that there is no potential danger to data subjects, thus an Order granting the temporary ban to preserve and protect the rights of the data subjects was issued:

An analysis of JuanHand’s Position Paper, Service Agreement, and revised Privacy Policy shows that the issuance of the temporary ban is necessary to protect the rights of data subjects for the following reasons: (1) JuanHand’s preparation and submission of a ‘standalone and rectified Privacy Policy independent from the Service Agreement’ does not necessarily change the manner it processes personal data; (2) JuanHand’s understanding and application of the criteria of lawful processing personal data, as gleaned from its revised Privacy Policy, is ambiguous; (3) JuanHand’s allegations in the Position Paper are inconsistent with its Service Agreement and revised Privacy Policy.²⁴⁶

On 10 September 2021, JuanHand’s new counsel entered its appearance.²⁴⁷ Evidently, JuanHand, through its new counsel, was

²⁴³ Supplemental Motion to Resolve, 10 January 2022, at 5, *in* In re: Wefund Lending Corporation and its Responsible Officers, NPC SS 21-006, (NPC 2022).

²⁴⁴ Entry of Appearance of the Former Counsel was on 10 August 2021.

²⁴⁵ Position Paper, 12 August 2021, at 2, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No 21-006 (NPC 2022).

²⁴⁶ Order, 12 August 2021, at 7, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

²⁴⁷ Entry of Appearance with Motion to Admit [Supplemental Comment with Motion for Lifting of Temporary Ban], at 1, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

able to properly address, to the satisfaction of the Commission, the initial lapses discovered by the CID that resulted in the imposition of the temporary ban. As a result, the Commission issued a Resolution lifting the temporary ban.²⁴⁸

Thus, taking into account the totality of the evidence and circumstances, JuanHand clearly demonstrated that its dedication to swiftly and substantially rectify its errors contradict the presence of willful and conscious indifference. Thus, despite the lapses present in this case, it does not amount to gross negligence sufficient to recommend JuanHand's Corporate Officers and Directors for prosecution based on Section 34 of the DPA.

Moreover, the Commission notes that the imposition of a temporary ban against JuanHand would not automatically result in an eventual recommendation for prosecution based on Section 34 of the DPA.

To recall, a temporary ban against JuanHand was granted on 12 August 2021 since all the requisites for its issuance were satisfied.²⁴⁹ Nevertheless, the Commission eventually issued a Resolution on 13 January 2022 lifting the temporary ban.²⁵⁰

The threshold for the issuance of a temporary ban is different from that of a recommendation for prosecution. A temporary ban, being a provisional remedy, is granted in order to prevent any potential harm from arising as well as to deter any further harm to data subjects from proliferating. Thus, the existence of a clear and present potential harm may result in the granting of a temporary ban. Its issuance, however, is not definitive proof that warrants a recommendation for prosecution. The Commission, in determining recommendations for prosecution, must still decide based on the totality of evidence presented, since it is bound to adjudicate based on the following:

²⁴⁸ Resolution, 13 January 2022, at 6, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

²⁴⁹ Order, 12 August 2021, at 6-15, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

²⁵⁰ Resolution, 13 January 2022, at 6, *in* In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS Case No. 21-006 (NPC 2022).

Section 3. *Rendition of decision.* The Decision of the Commission shall resolve the issues **on the basis of all the evidence presented** and its own consideration of the law.²⁵¹

Despite its investigation, the CID failed to present substantial evidence with respect to the Corporate Officers and Directors of JuanHand to support the allegations pertaining to Section 34 of the DPA. It cannot be assumed that JuanHand's Corporate Officers and Directors can be held liable based on Section 34 of the DPA simply because of their position. Given the foregoing, the Commission is constrained to find that there is no showing that JuanHand's Corporate Officers and Directors participated in the violation nor allowed its commission by their gross negligence. Without proof, JuanHand's Corporate Officers and Directors cannot be recommended for prosecution under the DPA.

WHEREFORE, premises considered, this Commission resolves that the case filed against Wefund Lending Corporation and its Corporate Officers and Directors is hereby **DISMISSED**.

This is without prejudice to the filing of appropriate civil, criminal, or administrative cases, if any, against Wefund Lending Corporation and its Responsible Officers.

SO ORDERED.

City of Pasay, Philippines.
16 May 2022.

LEANDRO ANGELO Y. AGUIRRE
Deputy Privacy Commissioner

WE CONCUR:

²⁵¹ National Privacy Commission, 2021 Rules of Procedure of the National Privacy Commission [NPC 2021 Rules of Procedure], rule VIII, § 3 (28 January 2021). Emphasis supplied.

JOHN HENRY D. NAGA
Privacy Commissioner

DUG CHRISTOPER B. MAH
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