



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

NPC Circular No.

Date :

Subject : **AMENDMENTS TO CERTAIN PROVISIONS OF THE 2021 RULES OF PROCEDURE OF THE NATIONAL PRIVACY COMMISSION**

Pursuant to the authority vested in the National Privacy Commission through Section 7(b) of Republic Act No. 1017, otherwise known as the "Data Privacy Act of 2012" (DPA), to receive complaints and institute investigations on matters affecting any personal information, the following amendments are hereby prescribed and promulgated, repealing for this purpose certain provisions of the 2021 Rules of Procedure of the National Privacy Commission dated 28 January 2021.

SECTION 1. Rule I, Sections 4 and 5 of the 2021 Rules of Procedure are hereby amended and renumbered to read as follows:

"SECTION 4. Definition of Terms. – The terms defined in the DPA, and its rules, are adopted accordingly in this Circular.

- a. **AFFIRMATIVE DEFENSES** – shall refer to any defense by the respondent which, if found to be credible, will negate liability under the DPA, even if it is proven that the respondent in fact committed the alleged acts.
- b. **BREACH INVESTIGATION** – shall refer to an investigation conducted by the NPC with respect to a data breach notification triggered by the applicable rules promulgated by the Commission.
- c. **COMMISSION** – shall refer to the Privacy Commissioner and the two (2) Deputy Privacy Commissioners.
- d. **COMPLAINT INVESTIGATION** – shall refer to an investigation conducted by the NPC with respect to a formal complaint filed by a data subject or his/her representative for violation of the DPA.
- e. **COURIER** – shall refer to any private mail carrier accredited by the Supreme Court, the NPC, or by international conventions of which the Philippines is a signatory.
- f. **DIGITAL SIGNATURE** – shall refer to an electronic signature consisting of a transformation of an electronic document or an electronic data message using an asymmetric or public cryptosystem such that a person having the initial untransformed electronic document and the signer's public key can accurately determine (1) whether the transformation was created using the private key that

corresponds to the signer's public key and (2) whether the initial electronic document had been altered after the transformation was made.¹

- g. **ELECTRONICALLY-STORED INFORMATION** – shall refer to any information which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It shall include any print-out or output that accurately reflects the electronically-stored information.²
- h. **EVALUATING OFFICER** – shall refer to a member of the Compliance and Monitoring Division (CMD) or a special committee or task force (or respective members thereof) that may or may not include members from the CMD created by order of the Commission.
- i. **HEARING OFFICER** – shall refer to a member of the Complaints and Investigation Division (CID) or a special committee or task force (or respective members thereof) that may or may not include members from the CID created by order of the Commission.
- j. **INVESTIGATING OFFICER** – shall refer to a member of the CID or a special committee or task force (or respective members thereof) that may or may not include members of the CID created by order of the Commission.
- k. **MEDIATION** – shall refer to the voluntary process in which a mediation officer facilitates communication and negotiation and assists the parties in reaching a voluntary agreement regarding a dispute.
- l. **MEDIATION OFFICER** – shall refer to a member of the Legal Division (LD) or a special committee or task force (or respective members thereof) that may or may not include members of the LD created by order of the Commission to conduct mediation.
- m. **MEDIATION SUPPORT OFFICER** – shall refer to a member of the LD or a designated person, special committee or task force (or respective members thereof) that may or may not include members of the LD created by order of the Commission to provide support to Mediation Officers.
- n. **NPC** – shall refer to the National Privacy Commission created under the DPA.
- o. **NECESSARY PARTY** – shall refer to a party who is not indispensable to the case but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action.
- p. **PARTIES IN INTEREST**- shall refer to a real party in interest who stands to be benefitted or injured by the judgment in the suit, or the party entitled to the avails

¹ A.M. 01-7-01 (Re: Rules on Electronic Evidence)

² See *ibid.*

of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

- q. PRELIMINARY MEDIATION CONFERENCE - shall refer to the initial mediation conference after the parties mutually agree to enter into the mediation proceeding and the case is referred by the investigation officer to the mediation officer.
- r. PRIVATE CAUCUS - shall refer to a private meeting with either party called by the mediation officer, with the consent of both parties, to discuss issues in private to arrive at a mutually satisfactory agreement beneficial to all parties.
- s. PUBLIC AUTHORITY - shall refer to any government entity created by the Constitution or law.
- t. RULES - shall refer to the 2021 NPC Rules of Procedure, including its amendments, unless otherwise stated.
- u. SUA SPONTE INVESTIGATION - shall refer to an investigation initiated by the NPC on its own for possible violation of the DPA. "

"SECTION 5. Enforcement Powers. - The Commission may use its enforcement powers in the course of investigations to order cooperation of the subject of the investigation or other interested individuals or entities, including public authorities; or to compel appropriate action to protect the interests of data subjects."

SECTION 2. Rule II, Section 1 of the 2021 Rules of Procedure is hereby amended to read as follows:

"SECTION 1. Who may file complaints. - Subject to Rule X of these Rules, data subjects who are affected by a privacy violation or data breach may file complaints for violations of the DPA: Provided, that a representative may file on behalf of a data subject if he or she is authorized by a special power of attorney. Provided, further, that in the case of a minor or a person alleged to be incompetent, the pertinent provisions of the Rules of Court and its amendments shall apply It is sufficient that proof establishing the relationship with the complainant be presented to the Commission as an attachment to the Complaint. In case the minor or a person alleged to be incompetent is represented by the father or mother, the birth certificate shall be considered sufficient proof, while for the guardian, it is sufficient to provide the court order designating the person as guardian.

One or more data subjects may be represented by a single juridical entity: Provided, that the juridical entity filing the complaint must be authorized by a special power of attorney to appear and act on behalf of the data subjects: Provided further, the person representing the juridical entity acting as the representative of one or more data

subjects must be authorized by a Board Resolution contained in a duly notarized Secretary's Certificate to appear and act on behalf of the juridical entity.

In cases where the complainant is a non-resident citizen who has no authorized representative in the Philippines or is unable to appoint such a representative, such person may submit a complaint in accordance with these Rules. *Provided* that the complaint must be notarized by the Philippine Embassy or Consulate or with apostille certificate where the complainant resides."

SECTION 3. Rule III, Section 6 of the 2021 Rules of Procedure is hereby amended to read as follows:

"SECTION 6. Service of judgments, orders, or resolutions of the NPC. - At the discretion of the Commission, judgments, orders, or resolutions shall be served either personally, by registered mail, by courier, by sending through user accounts and auto-generated notification by electronic systems implemented by the Commission, or by electronic mail: *Provided*, that when a complaint, pleading, or any other submission is filed or submitted through electronic mail, the Commission may serve its judgments, orders, or resolutions by electronic mail through the same electronic mail address used in the filing of the complaint or pleading, or submission of document unless otherwise indicated in the complaint, pleading, motion and other submissions of parties. When the Commission has opted to serve a judgment, order, or resolution by electronic mail, it shall no longer serve its issuances in the same case by any other mode of service unless circumstances warrant otherwise.

For judgment, order or resolution served by electronic mail, electronic service is considered complete at the time of electronic transmission of the document, or when available, at the time that the electronic notification of service of document is sent.

For matters coursed through the electronic systems implemented by the Commission, service of judgement, order or resolution is deemed completed at the time it is successfully uploaded to the system."

SECTION 4. Rule IV of the 2021 Rules of Procedure is hereby amended and renumbered to read as follows:

"RULE IV - PRE-INVESTIGATION PHASE

SECTION 1. *Outright dismissal, when allowed.* - Within thirty (30) calendar days from receipt of the complaint, the investigating officer may give the complaint due course or dismiss the complaint without prejudice, on any the following grounds:

1. The complaint is insufficient in form or did not comply with Section 3, Rule II of these Rules;
2. The complainant did not give the respondent an opportunity to address the complaint, unless failure to do so is justified;
3. The complaint does not pertain to a violation of the DPA or does not involve a privacy violation or data breach;

4. There is insufficient information to substantiate the allegations in the complaint; or
5. The parties, other than the responsible officers in case of juridical persons, cannot be identified or traced despite diligent effort to determine the same.

SECTION 2. *Amendment of complaint, when allowed.* - Complainant may substantially amend the complaint once as a matter of right at any time before respondent has filed a comment, in which case the respondent shall be provided a copy and granted a fresh period to submit his or her comment. Substantial amendments after the respondent has filed a comment may only be done upon motion filed with, and with leave of, the investigating officer.

SECTION 3. *Permissive joinder of parties.* - All persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may, except as otherwise provided in these Rules, join as complainants or be joined as respondents in one complaint, where any question of law or fact common to all such complainants or to all such respondents may arise in the action; but the Commission may make such orders as may be just to prevent any complainant or respondent from being embarrassed or put to expense in connection with any proceedings in which the party may have no interest.

SECTION 4. *Compulsory joinder of indispensable parties.* - Parties in interest without whom no final determination can be had of an action shall be joined either as complainants or respondents.

SECTION 5. *Necessary party.* - A necessary party is one who is not indispensable but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action.

SECTION 6. *Non-joinder of necessary parties to be pleaded.* - Whenever in any complaint or pleading in which a claim is asserted a necessary party is not joined, the pleader shall set forth the party's name, if known, and shall state why said party is omitted. Should the Commission find the reason for the omission unmeritorious, it may order the inclusion of the omitted necessary party if jurisdiction over the person may be obtained.

The failure to comply with the order for a necessary party's inclusion, without justifiable cause, shall be deemed a waiver of the claim against such party.

The non-inclusion of a necessary party does not prevent the Commission from proceeding with its investigation, and any decision rendered therein shall be without prejudice to the rights of such necessary party.

SECTION 7. *Misjoinder and nonjoinder of parties.* - Neither misjoinder nor non-joinder of parties is ground for dismissal of a complaint. Parties may be dropped or added by order of the Commission on motion of any party or on its own initiative at

any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately.

SECTION 8. Entity without juridical personality as respondent. - When two or more persons not organized as an entity with juridical personality enter into a transaction, they may be sued under the name by which they are generally or commonly known. In the answer of such respondent, the names and addresses of the persons composing the entity must be accurately stated in the answer. The address to be used shall be the last known address of the respondent.

SECTION 9. Submission of comment. - Upon finding that the complaint may be given due course, respondent shall be required to file a verified comment within fifteen (15) calendar days from receipt of the order. A copy of the complaint, together with its supporting evidence, shall be attached to the order to comment.

A complaint may be submitted for resolution if respondent does not file a comment within the period provided.

SECTION 10. Content of the comment. - The respondent shall raise all of his or her defenses in his or her comment. No motions to dismiss shall be entertained: *Provided*, the investigating officer, in its discretion, may treat the motion to dismiss as the respondent's comment.

SECTION 11. Change of physical address or electronic mail address. - A party who changes physical address or electronic mail address while the complaint is pending must promptly file, within five (5) calendar days from such change, a notice of change of physical address or electronic mail address with the NPC and serve the notice on all other parties. Service through the physical address or electronic mail address of a party, on record, shall be presumed valid unless such party notifies the Commission of any change.

SECTION 12. Prohibited pleadings and motions. - The following pleadings and motions shall not be allowed in the complaint proceedings:

1. motions to dismiss the complaint;
2. motions for a bill of particulars;
3. motions to declare respondent in default;
4. dilatory motions for postponement;
5. replies or rejoinders, except if the preceding pleading incorporates an actionable document;
6. third-party complaints;
7. interventions; and

8. appeal or motion for reconsideration from any interlocutory order of the investigating officer.

SECTION 13. *Affirmative defenses.* – The respondent, in lieu of a motion to dismiss, may raise in the comment affirmative defenses such as but not limited to:

- (1) The NPC has no jurisdiction over the subject matter;
- (2) The action is barred by a prior judgment;
- (3) There is another action pending between the same parties for the same cause;
- (4) The complainant has no legal capacity to sue;
- (5) That the pleading asserting the claim states no cause of action or is found to be frivolous, vexatious or made in bad faith;
- (6) The action has otherwise prescribed under the statute of limitations; or
- (7) That the claim or demand set forth in the complaint has been paid, waived, abandoned or otherwise extinguished.

SECTION 14. *Authority of the investigating officer to rule on motions.* – The investigating officer may directly rule on motions that do not fully dispose the case on the merits. No appeal or motion for reconsideration may be taken for any interlocutory order made by the investigating officer but these may be included as an issue once the case has reached the Commission for adjudication under Rule VIII of these Rules. “

SECTION 5. Rule VI of the 2021 Rules of Procedure is hereby amended and renumbered to read as follows:

“RULE VI - ALTERNATIVE DISPUTE RESOLUTION

SECTION 1. *Willingness to mediate.* – During the preliminary conference or at any stage of the proceedings but before endorsement of the case for decision by the Commission, the parties by mutual agreement may signify their interest to explore the possibility of settling issues by mediation.

SECTION 2. *Application for mediation.* – The parties shall jointly file with the investigating officer or Commission, as the case may be, an Application for Mediation manifesting their earnest commitment to engage in a meaningful settlement process and their willingness to abide by these Rules and the orders issued by the assigned mediation officer.

Parties may apply for mediation through their representatives, provided that the latter are duly authorized in accordance with Section 8 of this Rule. Otherwise, no order to mediate shall be issued by the investigating officer until and unless such requirements have been completed and substantiated.

No application for mediation shall be approved without payment of the mediation fee.

SECTION 3. *Mediation fees.* – The mediation fee in an amount prescribed by the NPC in a separate issuance shall be paid by the parties upon the filing of the Application for Mediation.

Parties may be exempted from the payment of the mediation fee under the same grounds as Section 4, Rule II of these Rules.

SECTION 4. *Order to mediate, when issued.* – The investigating officer or Commission, as the case may be, shall issue an Order to Mediate, which shall state the following: (a) the approval of the Application for Mediation; (b) the suspension of the complaint proceedings for up to ninety (90) calendar days pending the mediation proceedings; (c) the name of the assigned or designated mediation officer who shall preside over the mediation proceedings; and (d) the date, time, and place when the parties shall appear before the mediation officer for the preliminary mediation conference. Copies of the Order to Mediate shall be furnished to the mediation officer and the parties.

SECTION 5. *Conduct of Mediation Officers.* All mediation officers and mediation support officers shall be bound by the Code of Conduct for NPC Mediation Officers.

SECTION 6. *Preliminary mediation conference.* – The mediation officer shall receive the appearances of the parties and inform them of the mediation process and the manner by which the proceedings will be conducted. The mediation officer shall stress the benefits of an early settlement of the dispute and endeavor to achieve the most fair and expeditious settlement possible.

Each party shall be allowed to make a brief statement of their respective position and preferred outcome. The mediation officer shall assist the parties in exploring common grounds for settlement while respecting party autonomy throughout the process.

When necessary, the parties shall agree on the schedule of the next mediation conference and the mediation officer shall issue an order therefor.

SECTION 7. *Separate caucuses and subsequent conferences.* – The mediation officer may, with the consent of both parties, hold separate caucuses with each party to enable a determination of their respective real interest in the dispute; *provided*, that each party shall be afforded equal time and/or opportunity to ventilate such interest and motivation. The mediation officer may call such conferences/caucuses as may be necessary to facilitate settlement.

The mediation officer shall hold in confidence any matter disclosed during the separate caucuses and shall exercise reasonable prudence and discretion in the safeguarding of such information.

SECTION 8. *Personal appearance by the parties.* – Individual parties are required to personally appear during mediation conferences. Representatives may appear on behalf of individual parties: *Provided*, that they are authorized by special power of attorney to appear, offer, negotiate, accept, decide, and enter into a mediated

settlement agreement without additional consent or authority from the principal. If the party is a partnership, association, corporation, or a government agency, the representative must be authorized by a Board Resolution contained in a duly notarized Secretary's Certificate, or any equivalent written authority to offer, negotiate, accept, decide, and enter into a mediated settlement agreement.

No representative shall be allowed to appear in mediation on behalf of a party without proper authorization as verified by the mediation officer.

The parties shall inform the LD about changes in representation through a written statement or Manifestation along with the corresponding written authority to offer, negotiate, accept, decide, and enter into a mediated settlement agreement submitted to the mediation officer prior to the next scheduled mediation conference. The mediation shall not proceed until and unless the representatives are duly authorized in accordance with this Section.

SECTION 9. *Failure of parties to appear, effect.* – If any of the parties fail to appear without prior notice and justifiable reason for two (2) consecutive mediation conferences at any stage of the mediation, the mediation officer may order the termination of the mediation proceedings and refer the same for the resumption of complaint proceedings: *Provided*, in case of doubt that the party's absence is justified, the mediation officer may order for another caucus or conference. The mediation officer may require the non-appearing party to explain why said party should not be required to pay treble costs incurred by the appearing party, including attorney's fees, in attending the mediation conferences/caucuses, and be henceforth permanently prohibited from requesting mediation at any other stage of the complaint proceedings before the NPC.

SECTION 10. *Presence of lawyers in mediation.* – Lawyers who act as counsels, upon the discretion of the mediation officer, may attend the mediation conferences in the role of an adviser and consultant to their clients and shall cooperate with the mediation officer towards securing a settlement of the dispute. They shall help their clients comprehend the mediation process and its benefits and assist in the preparation of a mediated settlement agreement and its eventual enforcement.

Lawyers who act as duly authorized representatives of juridical entities may directly attend the mediation conference with all its concomitant rights and obligations.

SECTION 11. *Venue.* – Mediation proceedings may either be conducted via videoconferencing technology for the remote appearance and testimony of parties as provided in Rule XII Section 8 hereof or within the NPC premises, as agreed by both parties. Upon request of both parties, the mediation officer may authorize the conduct of a mediation conference at any other venue, provided that all related expenses, including transportation, food, and accommodation, shall be borne by both parties. If a change of venue is requested by one party, it must be with the other's conformity, and they shall agree on the terms of handling the expenses.

SECTION 12. *Mediation period and extension.* – The mediation officer shall endeavor to achieve a mediated settlement of the dispute within sixty (60) calendar days from the preliminary mediation conference.

Upon reasonable ground to believe that settlement may yet be achieved beyond the initial mediation period of sixty (60) calendar days, the mediation officer may extend the mediation period for another thirty (30) calendar days for good cause shown.

SECTION 13. *Mediated Settlement Agreement.* – A mediated settlement agreement following successful mediation shall be jointly prepared and executed by the parties and/or their representatives, with the assistance of their respective counsel, if any. Only the parties or their authorized representatives shall have the authority to confirm the provisions of the mediated settlement agreement and execute the agreement. The execution of a mediated settlement agreement shall terminate the mediation proceedings. The mediation officer shall certify that the contents of the agreement have been explained, understood, and mutually agreed upon by the parties, and that the provisions are not contrary to law, public policy, morals, or good customs.

SECTION 14. *Confirmation Conference.* The mediation officer shall require the parties to attend a confirmation conference prior to the endorsement of their mediated settlement agreement to the Commission. The parties shall present to the mediation officer the signed mediated settlement agreement as well as evidence of compliance with the stipulation in the agreement, if applicable.

When the agreement involves future obligations or obligations susceptible to partial fulfillment beyond the mediation period, proof of compliance shall be submitted to the Enforcement Division (EnD).

SECTION 15. *Confirmation by the Commission.* – The mediation officer shall issue a resolution submitting the signed mediated settlement agreement to the Commission within thirty (30) calendar days from the date of the confirmation conference. The Commission shall issue a resolution confirming the mediated settlement agreement within thirty (30) calendar days from submission of the resolution and mediated settlement agreement. Copies of the resolution issued by the Commission shall be furnished to the parties, the investigating officer, and the mediation officer.

SECTION 16. *Effect of confirmed Mediated Settlement Agreement.* – A confirmed mediated settlement agreement shall have the effect of a decision or judgment on the complaint but without prejudice to Rule X hereof and shall be enforced in accordance with the NPC's rules and issuances.

SECTION 17. *Failure to reach settlement.* – If the parties are unable to arrive at a settlement of their dispute, or it becomes apparent that a settlement, given the disparity of the respective positions of the parties, is not likely or achievable within the sixty (60) calendar day mediation period or the reasonable extension of such period under Section 12 of this Rule, the mediation officer may declare the mediation unsuccessful and terminate the proceedings by issuing a Notice of Non-Settlement of Dispute and furnishing copies to the investigating officer and the parties.

Parties may be allowed to re-apply for mediation despite a prior failure to reach settlement, unless otherwise permanently prohibited in accordance with Section 9 of this Rule: *Provided*, that the application is filed before the endorsement of the case for

decision by the Commission; Provided further, that the application is done in compliance with this Rule.

SECTION 18. *Resumption of complaint proceedings.* – Upon receipt of the Notice of Non- Settlement of Dispute issued by the mediation officer, the investigating officer or Commission, as the case may be, shall issue an order lifting the suspension of the complaint proceedings, which shall resume as a matter of course. Copies of the order, including the notice of the next hearing date of the complaint proceedings, shall be furnished to all the parties.

SECTION 19. *Confidentiality of proceedings.* – The mediation conferences shall be held in private. Persons other than the parties, their representatives, counsel, and the mediation officer may attend only with the consent of the parties and upon approval by the mediation officer. Anyone present during a mediation conference shall not disclose any information obtained during the conference to any other person, nor utter the same through other means.

The mediation proceedings and all related incidents shall be kept strictly confidential, and all admissions or statements shall be inadmissible for any purpose in any proceeding, unless otherwise specifically provided by law. However, evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its use in mediation.

No transcript or minutes of the mediation proceedings shall be taken, and the personal notes of the mediation officer, if any, shall likewise be inadmissible nor cognizable in any court, tribunal, or body for whatever purpose and shall be securely destroyed upon termination of the mediation proceedings.”

SECTION 6. Rule VII, Section 3 of the 2021 Rules of Procedure is hereby amended to read as follows:

“SECTION 3. *Fact-Finding Report.* – Within thirty (30) calendar days from the last day of the reglementary period to file memoranda, the investigating officer shall submit to the Commission a Fact-Finding Report, including the results of the investigation, the evidence gathered, and recommendations. Within ten (10) calendar days from submission of the Fact-Finding Report to the Commission, both parties shall be furnished with a notice that the case has been submitted for decision of the Commission.

For cases recommended for outright dismissal under Rule IV, Section 1, the investigating officer shall submit to the Legal and Enforcement Office (LEO) Director a Fact-Finding Report, including the basis and recommendation for outright dismissal of the complaint.”

SECTION 7. Rule VIII of the 2021 Rules of Procedure is hereby amended and renumbered to read as follows:

“RULE VIII - DECISION

SECTION 1. *Action on the recommendations of the Investigating Officer.* – The Commission shall review the evidence presented, including the Fact-Finding Report and evidence on record. On the basis of the review, the Commission may: (1) promulgate a Decision; (2) issue interlocutory orders on matters affecting personal data; or (3) order the conduct of a clarificatory hearing or the submission of additional documents, if in its discretion, additional information is needed to make a Decision. No motion for clarificatory hearing shall be entertained. In case the Commission finds that a clarificatory hearing is necessary, the following shall be observed:

- a. The parties shall be notified of the scheduled clarificatory hearing at least five (5) calendar days before the schedule;
- b. The Commission may require additional information and compel attendance of any person involved in the complaint;
- c. The parties shall not directly question the individuals called to testify but may submit their questions to the Commission for its consideration;
- d. The Commission may require the parties to submit their respective memoranda containing their arguments on the facts and issues for resolution.

SECTION 2. *Additional issues to be raised before the Commission.* – Upon motion, both parties may raise as an issue during adjudication any interlocutory order or decision issued by the investigating officer, evaluating officer, special committee, or task force as the case may be. The Commission, in its discretion, may resolve the issues separately or jointly with the merits of the case.

Once a given case has reached the Commission for adjudication, the investigating officer, evaluating officer, special committee or task force shall transmit to the Commission any pleadings, motions, and other submissions erroneously filed subsequent to the endorsement of the main case to the Commission. Subject to the discretion of the Commission, these pleadings, motions, and other submissions may form part of the main case.

SECTION 3. *Decision for Cases Dismissed Outright.* – The LEO Director shall review the evidence presented, including the Fact-Finding Report and the evidence on record.

Based on the review, the LEO Director may: (1) promulgate a Decision dismissing the case outright based on the grounds in Rule IV, Section 1 of these Rules; or (2) remand the complaint for investigation and require the respondent to file a verified comment to the complaint and appear for preliminary conference. *Provided*, the dismissal shall be without prejudice to the refiling with the NPC in accordance with the Rules, or filing of appropriate civil, criminal, or administrative cases against the respondent before any other forum or tribunal, if any.

SECTION 4. *Decision for Cases where Complainant files an Affidavit of Desistance.* – The LEO Director shall review the evidence presented, including the Fact-Finding Report and any other supporting documents. Based on the review, the LEO Director shall promulgate a Decision. *Provided*, the dismissal shall be with prejudice to the refiling with the NPC, but without prejudice to the filing of appropriate civil, criminal,

or administrative cases against the respondent before any other forum or tribunal, if any.

SECTION 5. Refiling of Complaint or Motion for Reconsideration on the Decision issued by the Legal and Enforcement Office. – The complainant may refile the complaint with the NPC or file with the LEO a motion for reconsideration of the Decision dismissing the case outright, otherwise, the Decision of the LEO Director shall become final and executory within fifteen (15) calendar days from notice thereof with proof of service on the adverse party. Provided, that if the complainant files a motion for reconsideration, the motion for reconsideration shall be elevated by the LEO Director to the Commission for its resolution within fifteen (15) calendar days from receipt of such motion.

SECTION 6. 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. The decision may include enforcement orders, including:

- a. an award of indemnity on matters affecting personal data protection, or rights of the data subject, where the indemnity amount to be awarded shall be determined based on the provisions of the Civil Code;
- b. permanent ban on the processing of personal data;
- c. a recommendation to the Department of Justice for the prosecution and imposition of penalties specified in the Act;
- d. compel or petition any entity, government agency or instrumentality to abide by its orders or take action on a matter affecting data privacy;
- e. impose fines for violations of the Act or issuances of the NPC; or
- f. any other order to enforce compliance with the DPA.

SECTION 7. Motion for Reconsideration on the Decision issued by the Commission. – The decision of the Commission shall become final and executory fifteen (15) calendar days from notice thereof with proof of service on the adverse party. One motion for reconsideration may be filed, which shall suspend the running of the said period. Any appeal from the Decision shall be to the proper courts, in accordance with law and rules.

SECTION 8. Entry of judgments and final orders. – If no appeal or motion for reconsideration is filed within the time provided in these Rules, the judgment or order shall attain finality, and an entry of judgment shall be issued to the parties. The date when the judgment becomes executory shall be deemed as the date of its entry. The entry of judgment shall contain the dispositive portion of the judgment with a certificate that such judgment has become final and executory.”

SECTION 8. Rule X of the 2021 Rules of Procedure is hereby amended and renumbered to read as follows:

“RULE X - SUA SPONTE INVESTIGATION

SECTION 1. Commencement.– The NPC, through the Complaints and Investigation Division (CID) or a special committee or task force assigned for such purpose, may initiate an investigation on the circumstances surrounding a possible data privacy violation or data breach in cases of, but not exclusive to, matters that arose from pending cases before the NPC including those that have resulted in a confirmed mediation settlement agreement, reports from the daily news, trends or academic studies, information gathered from corroborated and substantiated anonymous tips, or reports from other offices of the NPC.

SECTION 2. Temporary and permanent ban on processing of personal data. – A temporary or permanent ban on processing of personal data may be imposed on the subject of a *sua sponte* investigation in order to protect national security or public interest, or if it is necessary to preserve and protect the rights of data subjects, in accordance with Rule IX of these Rules.

SECTION 3. Assignment of investigating officer or special committee or task force. – The Commission may, when it deems proper, assign an investigating officer or create a special committee or task force which shall be specifically assigned by the NPC to conduct the investigation.

SECTION 4. Conduct of sua sponte investigation. – The investigating officer or special committee or task force shall investigate the circumstances surrounding the privacy violation or data breach, subject to due process requirements under the law. Investigations may include on-site examination of systems and procedures. In the course of the investigation, the parties subject of the investigation may be required to furnish additional information, document or evidence, or to produce additional witnesses or to appear for an investigation hearing or clarificatory conference before the investigating officer, special committee or taskforce, or the Commission.

SECTION 5. Request for case files during the conduct of a sua sponte investigation. – Within fifteen (15) calendar days upon receipt of request for case files by the parties in interest subject of the investigation, or their representative, legal heirs and assigns, or successors-in-interest, the CID shall release the requested case files to the requesting party. Provided, that the representative is authorized by a special power of attorney. Provided further, that in case where a party is a juridical entity, the representative is authorized by a Board Resolution contained in a duly notarized Secretary’s Certificate.

The requested case files may be in the form of a copy only or a certified true copy, at the option of the requesting party. The copies may be in the form of an electronic copy protected by a password; Provided, that in case physical copies be requested, the requesting party shall pay for the necessary expenses for its production.

The case files that may be requested by or provided to the above-mentioned persons shall include any and all documents and communications between the requesting party and the Commission, together with its attachments; Provided, that documents

that are internal in nature, such as but not limited to Technical Reports, Minutes of the Meeting, and Memorandum between the divisions within the Commission shall be excluded. Provided further that third-party reports and submissions shall also be excluded.

SECTION 6. *Sua Sponte Fact-Finding Report.* – Within thirty (30) calendar days from the termination of the investigation, the investigating officer or special committee or task force shall submit to the Commission a Fact-Finding Report, which shall include the results of the investigation, the evidence gathered, and any recommendations. In sua sponte investigations, the Fact-Finding Report serves as the complaint, with the Complaints and Investigation Division as the nominal complainant.

SECTION 7. *Order to comment.* – Upon receipt by the Commission of the Fact-Finding Report, the respondent identified after the conduct of the preceding investigation shall be provided a copy of the Fact-Finding Report and its annexes and given an opportunity to submit a comment or other pleadings, if necessary. In cases where the respondent or respondents fail without justification to submit a comment or appear before the NPC when so ordered, the Commission shall render its decision on the basis of available information under Rule VIII of these Rules.

SECTION 8. *Existence of a complaint during sua sponte investigation and vice versa, effect.* – If, during the proceedings of a *sua sponte* investigation, a formal complaint relating to the same act or omission for violation of the DPA is filed against the respondent, the complaint proceedings shall follow the normal procedure under these Rules: *Provided*, that the complaint proceedings shall not suspend the *sua sponte* proceedings, or vice versa: *Provided further*, that discovery and mediation proceedings under Rule V shall be available to the parties of the complaint proceedings: *Provided finally*, that a mediated settlement agreement shall only terminate the complaint proceedings but not the *sua sponte* investigation.

The preceding paragraph shall likewise apply if the complaint proceedings occurred first, and the NPC wishes to initiate a *sua sponte* investigation thereafter.”

SECTION 9. Rule XI of the 2021 Rules of Procedure is hereby amended to read as follows:

“RULE XI - BREACH INVESTIGATION

SECTION 1. *Procedure for data breach notification.* – The procedure for data breach notification and other requirements shall be governed by the DPA, its IRR, and the issuances of the Commission pertaining to data breach management. These Rules shall apply in a suppletory character.

SECTION 2. *Receipt of data breach notifications.* – The CMD shall be the initial recipient of data breach notifications and shall immediately assign an evaluating officer to review the data breach notification.

SECTION 3. *Preliminary requests that shall be resolved by CMD.* – Upon receipt of the data breach notification, the evaluating officer shall recommend to resolve preliminary requests from the PIC or PIP for (a) extensions to notify data subjects and/or (b) extensions to file full breach report: *Provided*, extensions granted by the

CMD shall not exceed a cumulative period of twenty (20) calendar days counted from the date of the initial request.

SECTION 4. *Preliminary requests that must be endorsed to the Commission.* - CMD shall endorse to the Commission the following requests from the PIC or PIP:

- a. On notification of data subjects:
 - i Request for exemption;
 - ii Request for postponement or extension beyond twenty (20) calendar days; and
 - iii Request for use of alternative modes of notification
- b. On submission of full report:
 - i Request for extension beyond twenty (20) calendar days; and
 - ii Subsequent request for extension
- c. Other preliminary requests not covered by the preceding Section.

SECTION 5. *Initial breach notification evaluation and monitoring.* - The CMD evaluating officer shall review the completeness of the data breach notification and determine the other documents needed to assess the PIC or PIP's breach management. The PIC or PIP will be notified of the need to submit additional documents through an order.

Moreover, the CMD shall monitor the compliance of the PIC or PIP with the periods in NPC issuances on data breach and the subsequent extensions allowed under the preceding sections.

In case of non-compliance, the CMD may apply for a Cease-and-Desist Order in accordance with the issuances of the Commission pertaining to the matter.

SECTION 6. *Final breach notification evaluation.* - Upon receipt of all the documents required to assess the PIC or PIP's breach management, the evaluating officer shall prepare a Breach Notification Evaluation Report based on information available on record.

The report may contain a recommendation of a possible violation of the DPA arising from the breach case and a recommendation for the imposition of administrative fine on other infractions.

Upon the finding of a possible data privacy violation that needs further investigation, the CMD shall transmit the Final Breach Notification Evaluation Report to Commission for endorsement to the CID. Otherwise, the CMD shall directly submit the same to the Commission for adjudication.

SECTION 7. *Conduct of breach investigation.* - Upon receipt of the Final Breach Notification Evaluation Report, an investigating officer shall be assigned by the CID to determine if there is a necessity to conduct an on-site or technical investigation. The investigating officer shall request a proper authority from the NPC before conducting any on-site or technical investigation. The investigating officer may also request assistance from technical personnel of the NPC. In the course of the investigation, the complainant and/or respondent may be required to furnish additional information, document or evidence, or to produce additional witnesses.

SECTION 8. *Fact-Finding Report* - The investigating officer shall submit to the Commission a Fact-Finding Report within thirty (30) calendar days from the termination of the on-site or technical investigation or receipt of the Final Breach Notification Evaluation Report, whichever is applicable.

SECTION 9. *Order to comment*. - Upon receipt by the Commission of the Fact-Finding Report, the respondent identified after the conduct of the preceding investigation shall be provided a copy of the Fact-Finding Report and its annexes and given an opportunity to submit a comment or other pleadings, if necessary. In cases where the respondent or respondents fail without justification to submit a comment or appear before the NPC when so ordered, the Commission shall render its decision on the basis of available information under Rule VIII of these Rules.

SECTION 10. *Failure to submit breach notification*. - Should the NPC receive information that a possible data breach occurred but the PIC or PIP did not submit any notification to the NPC, the CID may use this information to initiate a *sua sponte* investigation under Rule X.

If during the *sua sponte* investigation, a breach notification was submitted by the PIC or PIP, the CID shall continue with its *sua sponte* investigation for violation of the DPA.

The CMD shall, on its part, evaluate the breach matter submitted and recommend for the imposition of administrative fines, if proper.

SECTION 11. *Post-breach monitoring and compliance*. - The CMD shall monitor compliance of PICs or PIPs to the orders and resolutions issued by the Commission during its evaluation of the data breach case.

The EnD shall ensure the enforcement and monitoring of compliance of all other judgements, resolutions, decisions, or orders issued by the Commission.

SECTION 10. Rule XII of the 2021 Rules of Procedure is hereby amended and renumbered to read as follows:

“RULE XII - MISCELLANEOUS PROVISIONS

SECTION 1. *Transitory provision*. - These Rules shall apply to all complaints filed after its effectivity. It shall also apply to pending proceedings, except to the extent that their application would not be feasible or would work injustice.

SECTION 2. *Procedure for cease and desist orders*. - Procedure for the issuance of cease and desist orders shall be governed by the issuances of the Commission pertaining to the matter.

SECTION 3. *Procedure for breach notification*. - Procedure for data breach notification to the Commission shall be governed by the issuances of the Commission pertaining to the matter.

SECTION 4. *Request for case files*. - Copies of the case files may be requested by any party to the complaint or their authorized representative, lawful heirs, and assigns, in accordance with Section 17 of the DPA, or successor-in-interest, by filling-out the request form before the General Records Unit of this Commission. The request for case

files may be in the form of a copy only or a certified true copy, at the option of the requesting party. Provided, that the representative is authorized by a Special Power of Attorney. Provided further, that in case where a party is a juridical entity, the representative is authorized by a Board Resolution contained in a duly notarized Secretary's Certificate. Provided finally, that in case where the files are requested by heirs and assigns or successors-in-interest, proof of authority or relationship is required to be presented.

SECTION 5. Procedure for requests for advisory opinion. - Procedure for requests for advisory opinion shall be governed by the issuances of the Commission pertaining to the matter.

SECTION 6. Procedure for compliance checks. - Procedure for the conduct of compliance checks shall be governed by issuances of the Commission pertaining to the matter.

SECTION 7. Procedure for Enforcement of Administrative Fines. - Procedure for the enforcement of administrative fines shall be governed by the issuances of the Commission pertaining to the matter.

SECTION 8. Procedure for videoconferencing technology. - Procedure for the use of videoconferencing technology for the remote appearance and testimony of parties before the NPC shall be governed by the issuances of the Commission pertaining to the matter. Notwithstanding any provision of these Rules, the conduct of preliminary conferences, summary hearings, mediation conferences, investigations, clarificatory hearings, and all other hearings conducted by the concerned division and Commission may be conducted through videoconferencing technology or through any electronic means as authorized by the Commission.

SECTION 9. Repealing clause. - NPC Circulars No. 16-04 and 18-03 are hereby repealed. All other issuances by the NPC which are contrary to the provisions of these Rules are also hereby repealed or amended accordingly.

SECTION 10. Amendments. - These Rules or any of its portion may be amended or supplemented by the Commission.

SECTION 11. Application of Rules of Court. - The Rules of Court shall apply in a suppletory character and whenever practicable and convenient.

SECTION 12. Effectivity. - These Rules shall take effect fifteen (15) days after publication in a newspaper of general circulation."

SECTION 11. Repealing Clause. - The Rules not included herein and amended accordingly shall remain in force and full effect. If any part of this issuance is declared unconstitutional or invalid, such provision/s thereof not so declared shall remain valid and subsisting.

SECTION 12. Effectivity. - These amendments shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

Approved:

ATTY. JOHN HENRY D. NAGA
Privacy Commissioner

ATTY. LEANDRO ANGELO Y. AGUIRRE
Deputy Privacy Commissioner

ATTY. NERISSA N. DE JESUS-LAZARO
Deputy Privacy Commissioner

Date: _____

Ref No.: _____

NPC_DIT_CRLR-V1.0,R0.0,22 June 2022

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