

INTERNATIONAL ASSOCIATION OF JUDGES

2nd STUDY COMMISSION

The 2023 questionnaire asks for responses to the following questions:

1. In your jurisdiction is a court considered to be a data controller for data protection law purposes in all, or any, of the following situations:

a. When performing its judicial functions?

Section 03 (H) of Republic Act (R.A.) No. 10173, also known as the Data Privacy Act of 2012, defines data controllers as those that refer to natural, juridical person or any other body, who controls the collection, processing, use, sharing, disposal and destruction of personal data or instructs another to process personal data on its behalf. Applying this, data controlling is considered to be within the official judicial functions of the courts. Philippine courts are mandated to ensure that the sensitive and personal data of the parties are protected and handled in accordance with R.A. No. 10173. This includes managing personal information of litigants, witnesses and counsels.

b. For purposes connected with the administration of justice, including the publication of a judgment or court decision, or a list or schedule of proceedings or of hearings in proceedings?

Under Section 13, Rule 13 of the Rules of Court, judgments, final orders, or resolutions shall be served either personally or by registered mail. The provision further provides that when a party summoned by publication has failed to appear in the action, judgments, final orders or resolutions against him or her shall be served upon him or her also by means of publication. This provision applies only to civil cases.

In Administrative Matter No. 05-2-01-SC, issued on 13 March 2007, it provides that in all cases, it is the mandate of the court to make available court information and information materials concerning court processes, procedures and rules. These, however, do not include confidential information which is defined to refer to information not yet made a matter of public record to pending cases, such as notes, drafts, research papers, internal discussion, internal memoranda, records of internal deliberations

and similar papers. The rules further provides that even after the decision, resolution, or order is made public, such information that a justice or judge uses in preparing a decision, resolution, or order shall remain confidential.

Further, Memorandum Circular No. 15 dated 17 March 2023, issued by the Office of the President, provides that records of proceedings and processes deemed confidential by law for the privacy and/or protection of certain individuals such as children, victims of crime, witnesses to a crime or rehabilitated drug offenders are included in the list of exceptions to the right to access of information. The proceedings and processes referred to pertain to the following: (1) records of child and family cases; (2) children in conflict with the law from initial contact until final disposition of the case; (3) a child who is a victim of any offense under the *Anti-Child Pornography Act of 2009*, including the name and personal circumstances of the child, or the child's immediate family, or any other information tending to establish the child's identity; (4) a child witness, who is a victim of a crime, an accused of a crime, or a witness to a crime, including the name, address, telephone number, school or other identifying information of a child or an immediate family of the child; (5) cases involving violence against women and their children, including the name, address, telephone number, school, business, address, employer, or other identifying information of a victim or an immediate family member; (6) records of cases and documents involving actions for support including petitions for recognition and enforcement of foreign decisions or judgments on support; (7) trafficked persons, including their names and personal circumstances, or any other information tending to establish the identity of the trafficked person; (8) names of victims of child abuse, exploitation or discrimination; (9) cases in gender-based streets and public space sexual harassment, including information on the victim and the accused who is a minor; (10) disclosure which would result in undue and sensationalized publicity of any case involving a child in conflict with the law, child abuse, or violation of anti-trafficking of persons; (11) records, documents, and communications of proceedings involving domestic, inter-country, and administrative adoptions, including the identity of the child, natural parents and adoptive parents; (12) names of students who committed acts of bullying or retaliation; (13) children in situations of armed conflict; and (14) first time minor (drug) offenders under suspended sentence who comply with applicable rules and regulations of the Dangerous Drugs Board and who are subsequently discharged; judicial and

medical records of a drug dependent who was rehabilitated and discharged from treatment and rehabilitation centers under the compulsory submission program, or who was charged for violation of Section 15 of the *Comprehensive Dangerous Drugs Act* of 2002, as amended; and (4) identity, status and medical records of individuals with Human Immunodeficiency Virus (HIV), as well as results of HIV/Acquired Immune Deficiency Syndrome (AIDS) testing.

Furthermore, under Administrative Circular No. 83-2015, in the promulgation, publication and posting of the decisions, resolutions and orders in cases of rape, child abuse, human trafficking and other sensitive crimes, two (2) copies shall be prepared. The first copy is the unmodified version of the decision, resolution or order which shall contain the names and personal circumstances of the victims and will be placed in a sealed blue envelope signed by the clerk of court. The circular prohibits the release of the first copy to the public or media except when ordered by the Court and upon waiver of the parties. The second copy is the redacted version of the decision, resolution or order where the name of the victim with fictional initial set by the court and the personal circumstances will be removed.

c. For purposes connected with the efficient management and operation of the courts and for statistical purposes?

Yes, lower and appellate courts are required to submit monthly and annual reports which include, among others, newly raffled cases, recently disposed cases, and revived cases. In these reports, sensitive information of the parties are not included. The reports only include information about the docket number, the name of the parties, and the nature of the action.

2. In your jurisdiction does a data subject (e.g., a party to litigation, a witness, or a party whose interests may be affected by the litigation) have a right to information regarding the processing of their personal data by or on behalf of the courts?

Yes. As data subjects, parties, witnesses and counsels have a right to information regarding the processing of their personal information. Data subjects must voluntarily and willfully provide personal information, such as contact details, which shall form part of the records of the case. Parties

and witnesses are made aware that these information shall be used for the service of notices, Orders, Resolution and Decision.

Additionally, Section 34, Rule VIII of R.A. 10173 provides:

“Section 34. Rights of the Data Subject. The data subject is entitled to the following rights:

a. Right to be informed.

1. The data subject has a right to be informed whether personal data pertaining to him or her shall be, are being, or have been processed, including the existence of automated decision-making and profiling.

2. The data subject shall be notified and furnished with information indicated hereunder before the entry of his or her personal data into the processing system of the personal information controller, or at the next practical opportunity:

(a) Description of the personal data to be entered into the system;

(b) Purposes for which they are being or will be processed, including processing for direct marketing, profiling or historical, statistical or scientific purpose;

(c) Basis of processing, when processing is not based on the consent of the data subject;

(d) Scope and method of the personal data processing;

(e) The recipients or classes of recipients to whom the personal data are or may be disclosed;

(f) Methods utilized for automated access, if the same is allowed by the data subject, and the extent to which such access is authorized, including meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject;

(g) The identity and contact details of the personal data controller or its representative;

(h) The period for which the information will be stored; and

(i) The existence of their rights as data subjects, including the right to access,

correction, and object to the processing, as well as the right to lodge a complaint before the Commission.”

3. In your jurisdiction does a data subject whose personal data is published in a court document such as a judgment, have the right to seek rectification of allegedly inaccurate or inappropriately disclosed personal data?

R.A. 10173 includes provisions on the right to object and right to rectification. Sections 34 (b) and (d), Rule VIII of the said law provide:

“b. Right to object. The data subject shall have the right to object to the processing of his or her personal data, including processing for direct marketing, automated processing or profiling. The data subject shall also be notified and given an opportunity to withhold consent to the processing in case of changes or any amendment to the information supplied or declared to the data subject in the preceding paragraph.

When a data subject objects or withholds consent, the personal information controller shall no longer process the personal data, unless:

1. The personal data is needed pursuant to a subpoena;
2. The collection and processing are for obvious purposes, including, when it is necessary for the performance of or in relation to a contract or service to which the data subject is a party, or when necessary or desirable in the context of an employer-employee relationship between the collector and the data subject; or
3. The information is being collected and processed as a result of a legal obligation.

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d. Right to rectification. The data subject has the right to dispute the inaccuracy or error in the personal data and have the personal information controller correct it immediately and accordingly, unless the request is vexatious or otherwise unreasonable. If the personal data has been corrected, the personal information controller shall ensure the accessibility of both the new and the retracted information and the simultaneous receipt of the new and the retracted information by the intended recipients thereof: Provided, That recipients or third parties who have previously received such processed personal data shall be informed of its inaccuracy and its rectification, upon reasonable request of the data subject.”

Section 34 also includes the right to erasure or blocking which reads:

“Right to Erasure or Blocking. The data subject shall have the right to suspend, withdraw or order the blocking, removal or destruction of his or her personal data from the personal information controller’s filing system.

1. This right may be exercised upon discovery and substantial proof of any of the following:

- (a) The personal data is incomplete, outdated, false, or unlawfully obtained;
- (b) The personal data is being used for purpose not authorized by the data subject;
- (c) The personal data is no longer necessary for the purposes for which they were collected;
- (d) The data subject withdraws consent or objects to the processing, and there is no other legal ground or overriding legitimate interest for the processing;
- (e) The personal data concerns private information that is prejudicial to data subject, unless justified by freedom of speech, of expression, or of the press or otherwise authorized;
- (f) The processing is unlawful;
- (g) The personal information controller or personal information processor violated the rights of the data subject.

2. The personal information controller may notify third parties who have previously received such processed personal information.”

4. In your jurisdiction is personal data contained in a judgment or decision of a court, or in a list or schedule of proceedings or hearings, generally made accessible to the public? If so, are there exceptions and what are they? If not, is there a redaction requirement, or alternative requirement, to be implemented before a judgment / list/schedule can be published so as to safeguard the rights of data subjects?

As a general rule, cases, court processes, procedures and rules are considered public records. However, taking into account other pertinent laws, exceptions to this right to information are data that are detrimental to the identity and privacy of persons including victims, minors, or the

accused. In these cases, publication is generally avoided and access to proceedings which include attendance to hearings are strictly limited. Likewise, confidential information as defined under A.M. No. 05-2-01-SC cannot be made available to the public.

Further, as discussed above, Administrative Circular No. 83-2015 requires that in the promulgation, publication and posting of the decisions, resolutions and orders in cases of rape, child abuse, human trafficking and other sensitive crimes, courts shall prepare a redacted version of the decision, resolution or order where the name of the victim with fictional initial and the personal circumstances will be removed.

5. How are complaints addressed in your jurisdiction concerning alleged breaches by the courts of the rights of data subjects? Does your jurisdiction have a person or body with special responsibility for the supervision of data processing operations of courts when acting in their judicial capacity?

The right to file a complaint is also encompassed and embraced in the provisions of the right to information. In case of grievances, data subjects, whose confidential information were inaccurately published or used without due authorization may seek the proper relief through submitting a formal complaint with the Municipal Court Information Officers (MCIOs) also referred to as the Clerks of Court (COCs) for cases concerning lower courts. Violation of the rule on confidentiality of records and information is considered as grave offense and shall be punishable with the penalties provided under the Civil Service Rules on Administrative Cases for grave offenses, without prejudice to the criminal and civil liabilities that the violators may incur under applicable law.

R.A. 10173 also recognizes the right of data subject to lodge a complaint before the National Privacy Commission. Under Section 1, Rule II, "data subjects who are the subject of a privacy violation or personal data breach may file complaints for violations of the Data Privacy Act of 2012."

6. In your experience have data protection rules impacted adversely on your judicial independence? If so, how have they done so?

No, data protection does not hinder judicial independence. Rather, it affirms the judiciary's mandate to a person's constitutional and statutory

right to privacy. The data protection rules also balances the competing rights of the people to privacy and the right to information on matters of public concern.