



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

NPC Circular No. 2021-01

DATE : 28 January 2021

SUBJECT : 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. 10173, otherwise known as the “Data Privacy Act of 2012,” to receive complaints and institute investigations on matters affecting any personal information, the following 2021 Rules of Procedure of the National Privacy Commission are hereby prescribed and promulgated, repealing for this purpose NPC Circular No. 16-04 (Rules of Procedure) dated 15 December 2016 and NPC Circular No. 18-03 (Rules on Mediation before the National Privacy Commission) dated 18 December 2018.

**RULE I
GENERAL PROVISIONS**

SECTION 1. *Title.* – These Rules shall be known as the “2021 NPC Rules of Procedure”.

SECTION 2. *Liberal construction.* – Any doubt in the interpretation of any provision of these Rules shall be liberally interpreted in a manner mindful of the rights and interests of the data subject about whom personal information is processed.

SECTION 3. *Scope.* – These Rules shall apply to the receipt, investigation, alternative dispute resolution, preliminary conference, adjudication, and all other proceedings before the NPC.

SECTION 4. *Definition of Terms.* –

- a. **AFFIRMATIVE DEFENSES** – shall refer to any defense by the respondent which, if found to be credible, will negate liability under the Data Privacy Act of 2012, 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.



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- c. **COMMISSION** – shall refer to the Privacy Commissioner and the two (2) Deputy Privacy Commissioners, acting as a collegial body.
- 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 Data Privacy Act of 2012.
- e. **COURIER** – shall refer to any private mail carrier accredited by the Supreme Court, the NPC, or by international conventions by which the Philippines is a signatory.
- f. **DATA SUBJECT** – refers to an individual whose personal information is processed.
- g. **DIGITAL SIGNATURE** – refers 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
- h. **ELECTRONICALLY-STORED INFORMATION** – refers 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
- i. **EVALUATING OFFICER** – may refer to a member of the Compliance and Monitoring Division (CMD) or a special committee or task force that may or may not include members from the CMD created by order of the Commission.
- j. **INVESTIGATING OFFICER** – may refer to a member of the Complaints and Investigation Division (CID) or a special committee or task force created that may or may not include members from the CID created by order of the Commission.

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

² See *ibid.*



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- k. **MEDIATION** - refers 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** - refers to the personnel assigned or designated by the Commission to conduct mediation.
- m. **NPC** - shall refer to the National Privacy Commission created under the Data Privacy Act of 2012.
- n. **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.
- o. **RULES** - shall refer to the 2021 NPC Rules of Procedure unless otherwise stated.
- p. **SUA SPONTE INVESTIGATION** - shall refer to an investigation initiated by the NPC on its own for possible violation by one or more entities of the Data Privacy Act of 2012.

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; or to compel appropriate action to protect the interests of data subjects.

SECTION 6. *Prescriptive Period of the Penal provision of the DPA* - The Commission adopts the periods of prescription for violations penalized by special acts as provided under Act 3326³ and any amendments thereto.

³ Act 3326: An Act To Establish Periods Of Prescription For Violations Penalized By Special Acts And Municipal Ordinances And To Provide When Prescription Shall Begin To Run.



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**RULE II
COMPLAINTS**

SECTION 1. *Who may file complaints.* – Subject to Rule X of these Rules, 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: *Provided*, that a representative may file on behalf of a data subject if he/she is authorized by a special power of attorney.

One or more data subjects may be represented by a single juridical entity: *Provided*, that the person 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 same person must also be authorized by a Board Resolution and Secretary's Certificate to appear and act in behalf of the juridical entity.

SECTION 2. *Exhaustion of remedies.* – No complaint shall be given due course unless it has been sufficiently established and proven that:

1. the complainant has informed, in writing, the personal information controller (PIC), personal information processor (PIP), or concerned entity of the privacy violation or personal data breach to allow for appropriate action on the same; and
2. the PIC, PIP, or concerned entity did not take timely or appropriate action on the claimed privacy violation or personal data breach, or there is no response from the PIC, PIP, or concerned entity within fifteen (15) calendar days from receipt of written information from the complainant.

The NPC may waive any or all of the requirements of this Section at its discretion upon (a) good cause shown, properly alleged and proved by the complainant; or (b) if the allegations in the complaint involve a serious violation or breach of the Data Privacy Act of 2012, taking into account the risk of harm to the affected data subject, including but not limited to:

- i. when there is grave and irreparable damage which can only be prevented or mitigated by action of the NPC;
- ii. when the respondent cannot provide any plain, speedy or adequate remedy to the alleged violation; or



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iii. the action of the respondent is patently illegal.

SECTION 3. *Form and contents of the complaint.* – The complaint should be in the proper form, as follows:

1. The complaint must be in writing, signed by the party or his or her counsel, and verified in the format prescribed under the Rules of Court.
2. The complaint must specify the identity of the individual claiming to be the subject of a privacy violation or the person so damaged or injured by a data breach, who shall be referred to as the complainant.
3. The complaint shall include the complainant's contact information, and where the complainant or duly authorized representative may be served with orders, issuances, or communications, including an electronic mail address if available.
4. The complaint must identify the person, entity or organization complained of, who shall be referred to as the respondent: *Provided*, that in the case of juridical persons, the responsible officers may also be included as respondents if they participated in, or by their gross negligence, allowed the commission of the alleged violation of the Data Privacy Act of 2012. If not known, the complainant shall state the circumstances that may lead to the identity of the respondent.
5. The complainant shall also provide in the complaint, if known: (a) respondent's contact information; and (b) where respondent may be served with orders, issuances, or communications from the NPC.
6. The complaint shall include a narration of the material facts and supporting testimonial or documentary evidence, if any, all of which show: (a) the violation of the Data Privacy Act of 2012, its Implementing Rules and Regulations, or NPC issuances; or (b) the acts or omissions allegedly committed by respondent and in the case of juridical persons, employees or agents who committed the offense amounting to a privacy violation or personal data breach.
7. The complaint must include any and all reliefs sought by the complainant.



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8. The complainant shall attach any and all correspondence with respondent on the matter complained of and include a statement of the action taken by respondent to address the complaint, if any, showing compliance with the immediately preceding Section.
9. The supporting documents shall consist of copies of any documentary evidence and the affidavits of witnesses, if any, including those affidavits necessary to identify the documents and to substantiate the complaint.
10. A certification against forum shopping must accompany the complaint. The complainant shall certify under oath in the complaint, or in a sworn certification annexed and simultaneously filed with the pleading: (a) that he or she has not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his or her knowledge, no such other action or claim is pending with such court, tribunal or quasi-judicial agency; (b) if there is such other pending action or claim, a complete statement of its present status; and (c) if he or she should thereafter learn that the same or similar action or claim has been filed or is pending, he or she shall report that fact within five (5) calendar days therefrom to the NPC.

Failure to comply with the proper form and contents of the complaint may cause for outright dismissal under Section 1(1), Rule IV: *Provided*, an application that does not comply with the foregoing requirements may be acted upon if it merits appropriate consideration on its face, or is of such notoriety that it necessarily contains sufficient leads or particulars to enable the taking of further action.

SECTION 4. *Filing fees.* - No further action on a complaint shall be made unless the appropriate filing fees have been paid, except when: (a) the complainant is the government, or any agency or instrumentality, and government-owned and controlled corporations organized and existing under their own charter; excluding government-owned and controlled corporations organized and incorporated under the Corporation Code; (b) the complaint is filed by an indigent complainant as defined in the Rules of Court or as otherwise prescribed by NPC through an advisory; or (c) the NPC, upon motion by the requesting party, waives this requirement based on discretion and for good cause shown.



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SECTION 5. *Where to file complaints.* – A complaint may be filed at any office of the NPC.

SECTION 6. *Evaluation.* – Within five (5) calendar days from the receipt of the complaint, the NPC shall raffle or assign the case to an investigating officer to conduct the proceedings.

SECTION 7. *Consolidation of cases.* – Except when consolidation would result in delay or injustice, the NPC may, upon motion or in its discretion, consolidate two (2) or more complaints involving common questions of law or fact and/or same parties.

**RULE III
FILING AND SERVICE**

SECTION 1. *Modes of filing.* – The filing of all pleadings and other submissions shall be made through any of the following modes:

- a. Submitting personally two (2) original copies and as many copies as there are receiving parties, plainly indicated as such, to the NPC;
- b. Sending them by registered mail;
- c. Sending them by courier; or
- d. Transmitting them by electronic mail as may be authorized by the Commission.

In the first case, the receiving NPC officer or employee shall indicate on the pleading the date and hour of filing. In the second and third cases, the date of the mailing of motions, pleadings, and other submissions, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing. The envelope shall be attached to the record of the case. In the fourth case, the date of electronic transmission shall be considered as the date of filing provided that it is sufficient in form.

All pleadings and other submissions other than the complaint must be accompanied by an affidavit of service to the other party/parties.



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Illegible, erroneous, and otherwise malfunctioning submissions by electronic mail shall not be considered by the NPC.

SECTION 2. *Modes of service.* – Unless otherwise stated, pleadings, motions, and other submissions shall be served personally or by registered mail, courier, or electronic mail as may be authorized by the Commission.

Service by electronic mail made by one party to another may only be made if the party recipient consents to such mode of service or by order of the Commission. The party recipient, within five (5) calendar days from receipt of the electronic mail, may move *ex parte* that the party sender resubmit the electronic mail due to illegibility or error in the first submission.

The Commission may, in its discretion, order any party who filed and/or served by electronic mail to send the printed and/or original signed copy of the document to the NPC through conventional service.

Documents not readily amenable to electronic scanning such as but not limited to those containing object evidence must be filed and served conventionally. In no instance may filing and service be done partly by electronic means and partly by conventional means.

The investigating officer or Commission, in their discretion and on a case to case basis, may demand that the parties file and serve their submissions conventionally

SECTION 3. *Presumption of service.* - There shall be disputable presumptive notice to a party of a hearing or conference if such notice appears on the records to have been mailed at least twenty (20) calendar days prior to the scheduled date of hearing.

SECTION 4. *Extraterritorial service by NPC, when allowed.* – When the respondent does not reside and is not found in the Philippines, service may be effected out of the Philippines by personal service or as provided for in international conventions to which the Philippines is a party; or by publication in a newspaper of general circulation in such places and for such time as the investigating officer or Commission may order, in which case a copy of the order to comment shall be sent by registered mail to the last known address of the respondent, or in any other manner the investigating officer or Commission may deem sufficient. The complainant shall bear the cost referred to in this Section.



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SECTION 5. *Service by NPC to unknown respondent or respondent whose whereabouts are unknown.* – In cases where the respondent is unknown, or whenever his or her whereabouts are unknown and cannot be ascertained by diligent inquiry, service by the investigating officer or Commission shall be effected upon him or her by publication in a newspaper of general circulation in such places and for such time as the investigating officer or Commission may order. The complainant shall bear the cost of the publication.

In case the respondent has a known electronic mail address, service by the Commission may be effected upon him or her through electronic mail in lieu of publication.

SECTION 6. *Service of judgments, orders, or resolutions of the NPC.* – Judgments, orders, or resolutions shall be served either personally, by registered mail, by courier, or by electronic mail: *Provided*, that service by electronic mail shall only be made if the party recipient consents to such mode of service or by order of the Commission. *Provided further*, that when a complaint or pleading is filed 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, unless otherwise indicated therein.

**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, unless failure to do so is justified or excused with good cause;
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 Data Privacy Act of 2012 or does not involve a privacy violation or personal data breach;



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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. *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 4. *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 5. *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;



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5. replies or rejoinders, except if the preceding pleading incorporates an actionable document;
6. third-party complaints;
7. interventions; and
8. appeal or motion of reconsideration from any interlocutory order of the investigating officer.

SECTION 6. *Affirmative defenses.* – The respondent, in lieu of a motion of dismiss, may raise in his/her 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 7. *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.



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RULE V
PRELIMINARY CONFERENCE

SECTION 1. *Order to confer for preliminary conference.* – No later than thirty (30) calendar days from the lapse of the reglementary period to file the comment, the investigating officer shall hold a preliminary conference to determine:

- (1) whether alternative dispute resolution may be availed by the parties;
- (2) whether discovery is reasonably likely to be sought in the proceeding;
- (3) simplification of issues;
- (4) possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof; or
- (5) such other matters as may aid in the prompt disposition of the action.

SECTION 2. *Referral to alternative dispute resolution or mediation.* – If alternative dispute resolution is availed by the parties, the investigating officer shall refer the case to the mediation officer, in which case Rule VI of these Rules shall govern.

SECTION 3. *Failure of the parties to appear, effect.*– The failure of either of the parties to appear during the preliminary conference without justifiable reason shall cause the conference to be reset once, and upon failure of the party concerned once again to appear, said party shall be deemed to have waived his/her rights to the benefits hereto, including but not limited to mediation, discovery, and/or stipulation of facts.

SECTION 4. *Discovery of electronically-stored information, process.* – If discovery of electronically-stored information is reasonably likely to be sought in the proceeding, the parties shall discuss:

1. issues relating to the preservation of the information;
2. the form in which each type of information will be produced;
3. the period within which the information will be produced;



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4. the method for asserting or preserving claims of privilege or of protection of the information;
5. the method for asserting or preserving confidentiality and proprietary status of information relating to a party or person not a party to the proceeding;
6. whether allocation of the expense of production among the parties is appropriate; and
7. any other issue relating to the discovery of electronically-stored information.

The investigating officer may issue an order governing the discovery of electronically-stored information pursuant to:

- a. a motion by a party seeking discovery of the information or from which discovery of the information is sought; or
- b. a stipulation of the parties and of any person not a party from which discovery of the information is sought.

Subject to the rules on privileged information, the investigating officer may impose sanctions on a party for failure to provide electronically-stored information, except if the party proves that the information was lost as a result of the routine, good-faith operation of an electronic information system in accordance with existing policies.

Any party may move *ex parte* to request for the production of electronically-stored information and for permission to inspect, copy, test, or sample such information. The party on which the said request is served must respond within ten (10) calendar days, or in such timely manner as to preserve the integrity of the electronically-stored information. With respect to every item or category in the request, the response must state that inspection, copying, testing, or sampling of the information will be permitted; otherwise, the objection to the request and the reasons therefor.

The requesting party may specify the form in which the electronically-stored information is to be produced. Unless the parties otherwise agree or the investigating officer otherwise orders: (1) if a request for production does not specify a form for producing a



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type of electronically-stored information, the responding party shall produce the information in the form in which it is ordinarily maintained or in a form that is reasonably usable; and (2) a party need not produce the same electronically-stored information in more than one form.

A party may object to the discovery of electronically-stored information from sources that the party identifies as not reasonably accessible because of undue burden or expense. In its objection, the party shall identify the reason for the undue burden or expense. In a motion to compel discovery or for a protective order relating to the discovery of electronically-stored information, a party objecting to discovery bears the burden of proving that the information is from a source that is not reasonably accessible because of undue burden or expense.

Despite a showing that electronically-stored information would come from a source that is not reasonably accessible because of undue burden or expense, the investigating officer may still order discovery of such information if the party requesting shows that the likely benefit of the proposed discovery outweighs the likely burden or expense, taking into account the amount in controversy, the resources of the parties, the effect of the privacy violation to the data subject, and the importance of the requested discovery in resolving the issues. The investigating officer may set conditions for discovery of the information, including allocation of the expense.

The investigating officer shall limit the frequency or extent of discovery of electronically-stored information, even from a source that is reasonably accessible, if it is found that:

- a. it is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive;
- b. the discovery sought is unreasonably cumulative or duplicative;
- c. the party seeking discovery has had ample opportunity by discovery in the proceeding to obtain the information sought; or
- d. the likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues, and the importance of the requested discovery in resolving the issues.



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SECTION 5. *Discovery of other information.* - Discovery proceedings outside of the production, inspection and storage of electronically stored information are allowed and subject to the Rules of Court.

SECTION 6. *Confidentiality of discovered information.* - Any party who receives any information, whether electronically stored or not, by result of discovery, is mandated to preserve the confidentiality of such information. Furthermore, any information obtained during discovery may only be used by the parties for legal purposes and by NPC itself for the fulfillment of its mandate. This Section shall apply even if the party chooses not to use the information during the complaint proceedings.

SECTION 7. *Preliminary conference order.* - Within fifteen (15) calendar days from the termination of the preliminary conference, the investigating officer shall issue an order which shall recite in detail the matters taken up.

**RULE VI
ALTERNATIVE DISPUTE RESOLUTION**

SECTION 1. *Willingness to mediate.* - During the preliminary conference or at any stage of the proceedings but before rendition of 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. 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.



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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 sixty (60) 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. *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 explore common ground for settlement and suggest options for the parties to consider.

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

SECTION 6. *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 7. *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



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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 notarized Secretary's Certificate, Board Resolution, or any equivalent written authority to offer, negotiate, accept, decide, and enter into a mediated settlement agreement.

If the representative is not equipped with a proper special power of attorney, Secretary's Certificate, Board Resolution or their equivalent, he or she may still appear on behalf of his or her principal: *Provided*, that the other party consents to such appearance; *Provided further*, the representative undertakes to bring his or her authority to appear during the next mediation conference; *Provided finally*, no mediation settlement may be signed by any representative without a proper special power of attorney, Secretary's Certificate, Board Resolution or their equivalent.

SECTION 8. *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 9. *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 10. *Venue.* – Mediation proceedings shall be conducted within the NPC



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premises. 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 11. *Mediation period and extension.* – The mediation officer shall endeavor to achieve a mediated settlement of the dispute within sixty (60) 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 period to mediate may be extended for another thirty (30) calendar days by the mediation officer for good cause shown. Copies of the notice and/or order to extend the proceedings shall be furnished the investigation officer or the Commission, as the case may be.

SECTION 12. *Mediated Settlement Agreement.* – A mediated settlement agreement following successful mediation shall be jointly prepared and executed by the parties, with the assistance of their respective counsel, if any. 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 13. *Confirmation by the Commission.* – The mediation officer shall issue a resolution submitting the mediated settlement agreement to the Commission within ten (10) calendar days from signing. The Commission shall issue a resolution confirming the mediated settlement agreement within fifteen (15) 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 14. *Effect of confirmed Mediated Settlement Agreement.* – A confirmed mediated settlement agreement shall have the effect of a decision or judgment on the complaint, and shall be enforced in accordance with the NPC's rules and issuances.



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SECTION 15. *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 11 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.

SECTION 16. *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 17. *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.



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RULE VII
INVESTIGATION PHASE

SECTION 1. *Examination of systems and procedures.*– Upon termination of the preliminary conference, the investigating officer shall decide whether there is a necessity to further investigate the circumstances surrounding the privacy violation or personal data breach.

The investigating officer shall not be limited to the pleadings, allegations, issues and evidence submitted before him or her. Investigations may include on-site examination of systems and procedures, subject to the issuance of a proper authority from the NPC. Upon request of the investigating officer, on-site examination of systems and procedures may be undertaken by technical personnel who shall be authorized by the Commission to conduct highly technical and highly sensitive forensic examinations.

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. The parties shall have the right to examine the evidence submitted, which they may not have been furnished, and to copy them at their expense.

SECTION 2. *Submission of simultaneous memoranda.* – The investigating officer shall require the parties to submit simultaneous memoranda discussing and summarizing their respective causes of action, claims, and defenses within fifteen (15) calendar days from written notice. The memoranda must also include, in simple tabular form, a list of all the evidence presented by the party and purpose to his/her claim or defense. Failure to submit the memorandum within the period provided shall be considered a waiver of such opportunity.

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.

SECTION 4. *Withdrawal of the complaint.*– At any period before the submission of the Fact-Finding Report, the complainant may withdraw the complaint upon approval of the



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investigating officer and upon such terms and conditions as the latter may deem proper. The investigating officer may recommend either the dismissal of the case, with or without prejudice, or the application of the Commission's power to initiate *sua sponte* investigations.

**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 supporting documents. On the basis of the said 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 such schedule;
- b. The Commission may require additional information and/or 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 their consideration;
- d. The parties may be required 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



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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. *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 Data Privacy Act of 2012.

SECTION 4. *Appeal.* – The decision of the Commission shall become final and executory fifteen (15) calendar days after receipt of a copy by both parties. 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 5. *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 final order shall thereafter be entered in the book of entries of judgments. The date when the judgment or final order becomes executory shall be deemed as the date of its entry. The record shall contain the dispositive part of the judgment or final order with a certificate that such judgment or final order has become final and executory.



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RULE IX
BAN ON PROCESSING OF PERSONAL DATA

SECTION 1. *Temporary ban on processing of personal data.* – Upon filing of the complaint or at any time before the decision of the Commission becomes final and executory, a complainant may apply for the imposition of a temporary ban on respondent’s processing of personal data through motion.

SECTION 2. *Suspension of complaint proceedings.* – An application for a temporary ban on processing of personal data shall have the effect of suspending the complaint proceedings until such application has been finally resolved.

SECTION 3. *Requisites for temporary ban.* – A temporary ban on processing of personal data may be granted only when:

1. it is necessary in order to preserve the rights of the complainant or to protect national security or public interest, or if it is necessary to preserve and protect the rights of data subjects;
2. the motion shows facts entitling the complainant to the relief demanded;
3. unless exempted from the payment of filing fees as provided for in these Rules, the complainant shall file with the NPC a bond in an amount to be fixed by the investigating officer executed in favor of the party or person so banned from processing personal data; and
4. the parties are heard in a summary hearing.

SECTION 4. *Notice of summary hearing.*– Upon receipt of the motion, the investigating officer shall issue a notice of hearing to the parties. The notice to respondent shall include a copy of the receipt of the bond, if applicable.

The notice of hearing shall indicate the scheduled date and venue for the hearing, and a statement that respondent may appoint a duly authorized representative to appear at the hearing in order to protect its interests. The complainant shall shoulder the cost of personal service and ensure that the notice of hearing is received by respondent at least five (5) calendar days before the scheduled date. If personal service is impracticable, the



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notice of hearing shall be sent by complainant to respondent through private courier. Upon service, the complainant shall file with the investigating officer an affidavit of service attesting that service was properly made upon the respondent or respondents, as the case may be.

SECTION 5. *Summary hearing.* - The summary hearing shall consist of the personal submission by the parties and their witnesses of their respective judicial affidavits in accordance with Sections 3 and 4 of A.M. No. 12-8-8-SC dated 4 September 2012 (Judicial Affidavit Rule).

The parties shall identify and mark as exhibit their documentary or object evidence. Should the parties or their witnesses desire to keep the original document or object evidence in their possession, after the same have been identified, compared with the original, marked as exhibit, and authenticated, they may state for the record that the copy or reproduction attached to the judicial affidavit is a faithful copy or reproduction of the original.

SECTION 6. *Submission of position papers or other pleadings as alternative to summary hearing.* - The investigating officer may, upon motion or in its discretion, compel the parties to submit simultaneous position papers in lieu of a summary hearing.

SECTION 7. *Decision on the temporary ban.* - Within thirty (30) calendar days from the conclusion of the summary hearing, the investigating officer shall decide on the application for a temporary ban on processing of personal data.

SECTION 8. *Duration of temporary ban.* - When issued, the temporary ban on processing of personal data shall remain in effect until the final resolution of the main case, or upon further orders by the Commission or other lawful authority.

SECTION 9. *Permanent ban on processing of personal data.*- If, after the termination of the complaint proceedings, it appears that complainant is entitled to have a permanent ban on respondent's processing of personal data, the investigating officer shall include in their Fact-Finding Report a recommendation to the Commission for the issuance of an order for a permanent ban on processing of personal data.



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RULE X
SUA SPONTE INVESTIGATION

SECTION 1. *Commencement.*– The Commission may order an investigation of the circumstances surrounding a possible data privacy violation or personal data breach in cases of, but not exclusive to, matters that arose from pending cases before the NPC, reports from the daily news, trends or academic studies, information gathered from corroborated and substantiated anonymous tips, or reports from other offices of the Commission.

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 personal data breach. 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.

SECTION 5. *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.

SECTION 6. *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 given an opportunity to submit a comment. In cases where the respondent or respondents fail without justification to



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submit an 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 7. *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 Data Privacy Act of 2012 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.

**RULE XI
BREACH INVESTIGATION**

SECTION 1. *Procedure for personal data breach notification.* - The procedure for personal data breach notification and other requirements shall be governed by the Data Privacy Act of 2012, Implementing Rules and Regulations, and NPC Circular No. 16-03, including any of its amendments. 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. The CMD shall assign an evaluating officer to evaluate 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 resolve 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 fifteen (15) working 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:



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- a. exemption or postponement to notify data subjects;
- b. extensions to file full breach report and notify data subjects beyond fifteen (15) working days;
- c. use of alternative means of notification; or
- d. other requests such as but not limited to Motions for Reconsideration involving preliminary requests.

SECTION 5. *Initial breach notification evaluation and monitoring.* – The 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.

Moreover, the CMD shall monitor the compliance of the PIC or PIP with the periods in NPC Circular No. 16-03 and the subsequent extensions allowed under the preceding sections.

The CMD may order the submission of additional documents from the PIC or PIP; or in its discretion, apply for a Cease and Desist Order in accordance with Section 2, Rule XII of these Rules.

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 using all information available to him/her.

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

SECTION 7. *Conduct of breach investigation.* – Upon receipt of the 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



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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 Breach Notification Evaluation Report, whichever is applicable.

SECTION 9. *Order to comment*. - Upon receipt by the Commission of the Fact-Finding Report, the respondent shall be provided a copy of such report and given an opportunity to submit a comment. 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 news, corroborated and substantiated tip, or anonymous complaint that a breach occurred but the PIC or PIP did not submit any notification to the NPC, the latter 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 have the discretion to (1) continue the *sua sponte* investigation; or (2) suspend said investigation through notice to the investigating officer or special committee or task force and refer the breach notification to the CMD for evaluation under this Rule.

SECTION 11. *Post-breach monitoring and compliance*. - The CMD shall monitor and ensure compliance of PICs or PIPs to the judgments, resolutions or orders issued by the Commission with respect to any data breach related cases.

**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.



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SECTION 2. *Procedure for cease and desist orders.* – Procedure for the issuance of cease and desist orders shall be governed by the appropriate circular issued and published by the NPC.

SECTION 3. *Procedure for requests for advisory opinion.* – Procedure for requests for advisory opinion shall be governed by NPC Circular No. 18-01 including its amendments.

SECTION 4. *Procedure for compliance checks.* – Procedure for the conduct of compliance checks shall be governed by NPC Circular No. 18-02 including its amendments.

SECTION 5. *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 NPC Advisory No. 2020-02 including its amendments. 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/or Commission may be conducted through videoconferencing technology or through any electronic means as authorized by the Commission.

SECTION 6. *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 7. *Amendments.* – These Rules or any of its portion may be amended or supplemented by the Commission.

SECTION 8. *Application of Rules of Court.* – The Rules of Court shall apply in a suppletory character and whenever practicable and convenient.

SECTION 9. *Effectivity.*– These Rules shall take effect fifteen (15) days after publication in a newspaper of general circulation.



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Approved:

(Sgd.)
RAYMUND ENRIQUEZ LIBORO
Privacy Commissioner and Chairman

(Sgd.)
JOHN HENRY DU NAGA
Deputy Privacy Commissioner

(Sgd.)
LEANDRO ANGELO Y. AGUIRRE
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