



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

**PRIVACY POLICY OFFICE
ADVISORY OPINION NO. 2018-030**

31 July 2018



**RE: REQUEST FOR COMELEC TO COLLECT AND PUBLISH
DATA ON WOMEN AND DIFFERENTLY-GENDERED
CANDIDATES AND ELECTED OFFICIALS**

Dear ,

We write in response to your letter to the National Privacy Commission (NPC) which sought to clarify whether the collection of information regarding candidates' sexual orientation and gender identity and expression (SOGIE) by the Commission on Elections (COMELEC), to be anchored on the provisions of Republic Act No. 9710, known as the Magna Carta of Women, and the publication of the statistics relating thereto, is in accordance with Republic Act No. 10173,¹ also known as the Data Privacy Act of 2012 (DPA).

This is in relation to the 13 February 2018 letter from the Secretary General of the National Citizens' Movement for Free Elections (NAMFREL), which requested the COMELEC to collect data on the number of women and other differently-gendered individual candidates and eventually elected, for each barangay, disaggregated by the type of election, and to publicize such information, for a better understanding of the political and electoral environment around these two elections.

However, we understand that the Omnibus Election Code² does not require the candidates to declare their SOGIE in their Certificates of Candidacy (COC). Hence, your office opined that the collection and publication of gender statistics and sex-disaggregated data of candidates may find legal basis in Section 36(c) of the Magna Carta of Women,³ to wit:

“Section 36. Gender Mainstreaming as a Strategy for Implementing the Magna Carta of Women.

xxx xxx xxx

¹ An Act Protecting Individual Personal Information in Information and Communications Systems in the Government and the Private Sector, Creating for this purpose a National Privacy Commission and for other Purposes [DATA PRIVACY ACT OF 2012], Republic Act No. 10173 (2012).

² Omnibus Election Code of the Philippines, Batas Pambansa Bilang 881, § 74 (1985).

³ An Act Providing for the Magna Carta of Women [THE MAGNA CARTA OF WOMEN], Republic Act No. 9710 (2009).

(c) Generation and Maintenance of GAD Database. All departments, including their attached agencies, offices, bureaus, state universities and colleges, government-owned and -controlled corporations, local government units, and other government instrumentalities shall develop and maintain a GAD database containing gender statistics and sex disaggregated data that have been systematically gathered, regularly updated; and subjected to gender analysis for planning, programming, and policy formulation.”

But you likewise stated that your office is not completely convinced that the above statutory provision may be used as basis for the collection and processing of SOGIE of candidates and elected officials.

The Magna Carta of Women recognizes the role and importance of women in nation building and declares that the State endeavors to develop plans, policies, programs, measures, and mechanisms to address discrimination and inequality in the economic, political, social, and cultural life of women and men.⁴

We understand that the current form of the COC has a field for “Gender” and tickboxes for “Male” and “Female”. Based on discussions with the COMELEC representatives, these were included on the basis of COMELEC’s gender and development (GAD) program.

Be that as it may, we would like to raise several concerns on the collection of candidate’s and elected official’s SOGIE:

- It is not a requirement under the Omnibus Election Code. Neither is it a qualification for running for public office.
- Collecting such information through the COC may create the belief that it is mandatorily required by law, and thus, may cause a level of compulsion on the part of candidates to provide an answer which they may not be comfortable to share to the public.
- There is uncertainty as to how such data will be actually collected through the COC form, *i.e.*, a tick box for “Others” or a blank where candidates may indicate an open-ended response, etc. This may be construed as gender insensitive. Also, the COMELEC may have a difficult time analyzing data from open-ended responses.
- Even if COMELEC will only publish statistics and aggregated data relating to the SOGIE collected, it is still possible for copies of the COCs to be released to the public through Freedom of Information (FOI) requests and to third parties when there are disqualification cases.

From the foregoing, we caution against the collection of SOGIE through official COMELEC forms such as the COC as the same is not absolutely necessary for COMELEC’s mandate and for the overall electoral process in the country.

COMELEC and/or NAMFREL may explore other avenues for collecting such information if they still wish to do so, *i.e.*, voluntary surveys.

⁴ The Magna Carta of Women, § 2.

Collection and processing of sensitive personal information

If and when SOGIE of candidates and elected officials is collected, we emphasize that the processing thereof should always adhere to the general data privacy principles of transparency, legitimate purpose, and proportionality.

COMELEC and/or NAMFREL must be able to explain to the data subjects the nature, purpose, and extent of the processing of his or her personal data. The processing must be limited to the declared and specified purpose, *i.e.*, gender analysis for planning, programming, and policy formulation for a better understanding of the political and electoral environment of elections. And lastly, processing of the SOGIE information should be adequate, relevant, suitable, necessary, and not excessive in relation to the purpose.

As a personal information controller, COMELEC should uphold data subjects' rights, and implement reasonable and appropriate organizational, physical and technical measures intended for the protection of personal data, taking into consideration that SOGIE is sensitive personal information.

This opinion is being rendered based on the limited information you have provided. Additional information may change the context of the inquiry and the appreciation of the facts.

For your reference.

Very truly yours,

(Sgd.) IVY GRACE T. VILLASOTO
OIC-Director IV, Privacy Policy Office

Noted by:

(Sgd.) RAYMUND ENRIQUEZ LIBORO
Privacy Commissioner and Chairman