

SENATE
S. B. No. 1243

NOV 1 1954

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The Constitution provides that:

Article 3, Section 3(1). The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

We live in an age of ever-increasing dependence on electronic data storage, communications, and usage. Vast quantities of data are stored electronically and may be instantly transferred electronically from one party to another for business or for other purposes. The nature of such data allows for the increasing possibility that an individual's privacy rights may be violated.

The technology is growing so rapidly that broader societal consequences may not have been reviewed or studied, nor is it clear how the use of such technology will affect existing data systems and their use.

A Privacy Protection Commission should be established to: (1) ensure that privacy rights of Filipino citizens regarding electronic data, and fair information practices and principles are not abused or violated; (2) provide advisory guidance to the public and private sector on matters related to electronic data storage, communication, and usage; (3)

provide the public with a central agency for information and guidance on privacy protection and fair information practices and principles; and (4) promote and encourage the adoption of fair information practices and principles in the public and private sector which includes:

- (i) the principle of openness, which provides that the existence of recordkeeping systems and databanks containing information about individuals be publicly known, along with a description of the main purpose and uses of the data;
- (ii) the principle of individual participation, which provides that each individual should have the right to see any data about him or herself and to correct any data that is not timely, accurate, or complete;
- (iii) the principle of collection limitation, which provides that there should be limits to the collection of personal data, that data should be collected by lawful and fair means, and that data should be collected, where appropriate, with the knowledge and consent of the subject;
- (iv) the principle of use limitation, which provides that there are limits to the use of personal data and that data should be used only for purposes specified at the time of collection;
- (v) the principle of disclosure limitation, which provides that personal data should not be communicated externally without the consent of the data subject or other legal authority;

Miriam Defensor Santiago

MIRIAM DEFENSOR SANTIAGO

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NO 54

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AN ACT
TO ESTABLISH A PRIVACY PROTECTION COMMISSION

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled,

SECTION 1. *Short Title.* - This Act shall be known as the "Privacy Protection Act."

SECTION 2. *Establishment Of A Privacy Protection Commission.* - There is established the Privacy Protection Commission, here called the "Commission".

SECTION 3. *Privacy Protection Commission.* - (a) MEMBERSHIP- (1) The Commission shall be composed of 5 members who shall be appointed by the President, by and with the consent of the Senate, from among members of the public at large who are well qualified for service on the Commission by their knowledge and expertise in:

- (A) civil rights and liberties;
- (B) law;
- (C) social sciences;
- (D) computer technology;
- (E) business; or
- (F) State and local government.

(2) No more than 2 members of the Commission shall be members of the same political party.

(3) One of the members shall be designated Chairperson of the Commission by the President.

(b) MEETINGS- The Chairperson shall preside at all meetings of the Commission, but the Chairperson may designate another member as an acting Chairperson who may preside in the absence of the Chairperson. A quorum for the transaction of business shall consist of at least 3 members present, except that one member may conduct hearings and take testimony if authorized by the Commission. Each member of the Commission, including the Chairperson, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information relating to performance of the duties or responsibilities of the Commission, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members. The Chairperson or acting Chairperson shall see to the faithful execution of the policies and decisions of the Commission and shall report thereon to the Commission from time to time or as the Commission may direct.

(c) TERMS- (1) A member of the Commission shall serve for a term of 7 years, except for members first appointed to the Commission:

(A) the member designated as Chairperson by the President shall be appointed for a term of 7 years;

(B) 2 members shall be appointed for a term of 5 years;

(C) 2 members shall be appointed for a term of 3 years; and

(D) all such terms shall begin on:

(i) January 1 next following the date of the enactment of this Act; or

(ii) such date as designated by the President.

(2) A member may continue to serve until a successor is confirmed.

(3) Members shall be eligible for reappointment for a single additional term.

(d) VACANCIES- (1) Vacancies in the membership of the Commission shall be filled in the same manner in which the original appointment was made.

(2) If there are 2 or more Commission members in office, vacancies in the membership of the Commission shall not impair the power of the Commission to execute functions and powers of the Commission.

(e) COMPENSATION AND RESTRICTION ON OTHER EMPLOYMENT- The members of the Commission may not engage in any other employment during their tenure as members of the Commission.

(f) REQUESTS AND RECOMMENDATIONS- (1) Whenever the Commission submits any budget estimate or request to the President or the Department of Budget and Management, it shall concurrently transmit a copy of that request to Congress.

(2) Whenever the Commission submits any legislative recommendation, or testimony, or comments on legislation, to the President or Department of Budget and Management, it shall concurrently transmit a copy thereof to Congress. No officer or government agency shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or government agency for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to Congress.

(g) SEAL- The Commission shall have an official seal which shall be judicially noted.

SECTION 4. *Personnel Of The Commission.* - (a) EXECUTIVE DIRECTOR AND GENERAL COUNSEL- The Commission shall appoint an Executive Director and a General Counsel who shall perform such duties as the Commission may determine. The Executive Director and the General Counsel shall be compensated at a rate to be determined by the President.

(b) LIMITATION ON EMPLOYEES- The Commission is authorized to appoint and fix the compensation of not more than 50 officers and employees (or the full-time equivalent thereof), and to prescribe their functions and duties.

(c) CONSULTANTS- The Commission may obtain the services of experts and consultants in accordance with law.

(d) DETAIL OF GOVERNMENT EMPLOYEES- Any government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

SECTION 5. *Functions Of The Commission.* - (a) IN GENERAL- The Commission shall:

(1) provide leadership and coordination to the efforts of all government departments and agencies to enforce all statutes, Executive Orders, regulations and policies which involve privacy or data protection;

(2) maximize effort, promote efficiency, and eliminate conflict, competition, duplication, and inconsistency among the operations, functions, and jurisdictions of government departments and agencies responsible for privacy or data protection, data protection rights and standards, and fair information practices and principles;

(3) develop model standards, guidelines, regulations, policies, and routine uses for and by national and local agencies in implementing the provisions of the Constitution and other laws on privacy.

(4) publish on a regular basis a guide to all laws relating to data protection, for use by record subjects;

(5) publish a compilation of agency system of records notices, including an index and other finding aids;

(6) provide active leadership, guidance, education, and appropriate assistance to private sector businesses, and organizations, groups, institutions, and individuals regarding privacy, data protection rights and standards, and fair information practices and principles;

(7) develop model privacy, data protection, and fair information practices, and principles, standards, guidelines, policies, and routine uses of data for use by the private sector; and

(8) upon written request, provide appropriate assistance to the private sector in implementing privacy, data protection, and fair information practices, principles, standards, guidelines, policies, or routine uses of privacy and data protection, and fair information.

(b) DISCRETIONARY FUNCTIONS- The Commission may:

(1) issue advisory opinions relating to privacy and data protection practices, principles, standards, guidelines, policies, or routine uses of data at the request of a government agency, a data integrity Commission of an agency or business, a court, the Congress, a business or any person;

(2) file comments with the Department of Budget and Management and with any agency on any proposal to:

(A) create or modify a system of records; or

(B) establish or alter routine uses of such a system;

- (3) request an agency to stay:
 - (A) the establishment or revision of a system of records;
 - (B) a routine use; or
 - (C) an exemption;
- (4) review national and local laws, Executive Orders, regulations, directives, and judicial decisions and report on the extent to which they are consistent with privacy and data protection rights, and fair information practices and principles;
- (5) at the request of a national or local government agency, a private business, or any person, provide assistance on matters relating to privacy or data protection;
- (6) comment on the implications for privacy or data protection of proposed national or local statutes, regulations, or procedures;
- (7) propose legislation on privacy or data protection;
- (8) accept and investigate complaints about violation of privacy or data protection rights, and fair information practices and principles;
- (9) participate in any formal or informal administrative proceeding or process where, in the judgment of the Commission, the action being considered would have a material effect on privacy or data protection, either as a result of direct government action or as the result of direct government regulation of others;
- (10) petition a government agency to take action on a matter affecting privacy or data protection;
- (11) conduct, assist, or support research, studies, and investigations on the collection, maintenance, use or dissemination of personal information; the implications for privacy or data protection of computer, communications, and other technologies, and any other matter relating to privacy or data protection;
- (12) assist in the development or implementation of policies designed to provide for the protection of personal information maintained by private sector recordkeepers;
- (13) assist Philippine companies doing business abroad to respond to foreign privacy or data protection laws and agencies;

(14) assist in the coordination of the Philippine privacy and data protection policies with the privacy and data protection policies of foreign countries; and

(15) cooperate and consult with privacy or data protection commissions, boards, or agencies of foreign governments.

SECTION 6. *Confidentiality Of Information.* - (a) IN GENERAL- Each department, agency, and instrumentality of the executive branch of the Government, including each independent agency, shall furnish to the Commission upon request made by the Chairperson, such data, reports, and other information as the Commission determines necessary to carry out its functions under this Act.

(b) CONFIDENTIALITY- In carrying out its functions and exercising its powers under this Act, the Commission may accept from any government agency or other person, any identifiable personal data if such data is necessary to carry out such powers and functions. In any case in which the Commission accepts any such information, it shall provide all appropriate safeguards to ensure that the confidentiality of such information is maintained and that after completion of the specific purpose for which such information is required, the information is destroyed or returned to the agency or person from which it was obtained.

SECTION 7. *Powers Of The Commission.* - (a) IN GENERAL- The Commission may, in carrying out its functions under this Act:

- (1) conduct inspections;
- (2) sit and act at such times and places;
- (3) hold hearings;
- (4) take testimony;

(5) require by subpoena the attendance of such witnesses and the production of books, records, papers, correspondence, documents, film, and electronic information;

(6) administer such oaths; and

(7) make appropriate and necessary expenditures.

(b) SUBPOENAS- (1) Subpoenas shall be issued only upon an affirmative vote of a majority of all members of the Commission. Subpoenas shall be issued under the signature of the Chairperson or any member of the Commission designated by the Chairperson. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(2) In the case of a disobedience to a subpoena issued under this Act, the Commission may invoke the aid of any Regional Trial Court of the Philippines in requiring compliance with such subpoena. Any Regional Trial Court of the Philippines within the jurisdiction where such person is found or transacts business may, in the case of contumacy or refusal to obey a subpoena issued by the Commission, issue an order requiring such person to appear and testify, and to produce such books, records, papers, correspondence, documents, films, and electronic information as may be required. Any failure to obey the order of the court shall be punished by the court as a contempt thereof.

(c) APPEARANCES- Appearances by the Commission in judicial and administrative proceedings shall be in its own name.

(d) DELEGATION- The Commission may delegate any of its functions to such officers and employees of the Commission as the Commission may designate and may authorize such successive redelegations of such functions as it may determine desirable.

(e) ADMINISTRATIVE POWERS- In order to carry out provisions of this Act, the Commission may:

- (1) enter into contracts or other arrangements with any local government, any agency or department of the government, or with any person, firm, association, or corporation; and
- (2) establish advisory committees, in accordance with law.

SECTION 8. *Reports And Information.* - In an annual report to the President and Congress, the Commission shall report on its activities in carrying out the provisions of this Act. The Commission shall undertake whatever efforts it may determine to be necessary or appropriate to inform and educate the public of data protection, privacy, and fair information rights and responsibilities.

SECTION 9. *Appropriations.* - To carry out the provisions of this Act, such sum as may be necessary is hereby authorized to be appropriated from the National Treasury. Thereafter, the sum necessary for the continuous operation of the program shall be included in the annual appropriation of the Office of the President.

SECTION 10. *Separability Clause.* - If any provision, or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision shall remain valid and subsisting.

SECTION 11. *Repealing Clause.* - Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with, the provisions of this Act is hereby repealed, modified or amended accordingly.

SECTION 12. *Effectivity Clause.* - This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved.

MJS
10/14/98