



28 February 2020

ADVISORY OPINION

Reference No. DPO 20-04

FOR

:



SUBJECT

:


Disclosure of Letter in 201 File

Dear :

We respond to your inquiry on whether an employee has the right to access a recommendation letter written by the employee's superior.

Facts

- An employee is requesting to access a letter about him/her written by the employee's superior.
- This recommendation letter has been made part of the employee's 201 File.

Under the  with the employee's union, employees have access to their 201 Files.

Issue

May the employee be granted access to the letter?

Advisory Opinion

Yes, the employee has the right to access the letter.

The privacy of letters are generally protected by the "privacy of communication and correspondence" between the sender and recipient – even if the letter is about a third party. However, in the case at hand, the letter's inclusion in the 201 File transforms its character from a private correspondence to a document processed related to the employee's employment. Under the employee's "right to access" in the Data Privacy Act, the letter may be disclosed to the employee.

Discussion

Access to letters

Generally, a person who is neither the sender nor the recipient of the letter has no right to access such letter – even if the letter talks about such person. This is to protect the “privacy of communication and correspondence”¹ between the sender and recipient, regardless of the contents of the letter. Letters are even considered intellectual properties of their author.²

Access to information about an employee

However, the letter was made part of the employee’s 201 File which transforms its character from a mere private correspondence to a document processed related to the employee’s employment.

Under the [REDACTED], employees have the right to access the 201 File pertaining to them. Since the letter is now part of the 201 File, the employee has a right to access the letter.

There is no privacy violation in allowing an employee to access his/her own records. The “right to access” is mandated by the Data Privacy Act, stating that data subjects are entitled to “reasonable access, upon demand of ... xxx ... Contents of his or her personal information that were processed”.³

Qualification

This opinion presupposes that the letter is a valid part of the 201 File.

If in the first place the letter could not validly be categorized as a document of the 201 File, its physical insertion in a 201 folder does not make it part of the official set of documents that form the 201 File.

Only documents that officially form part of the 201 File may be disclosed to employees.

Conclusion

Since the letter is now a part of the 201 File which the employee has the right to access and since the Data Privacy Act grants the employee the “right to access”, then the letter may be disclosed to the employee.

¹ Civil Code, Article 32 (11).

² Intellectual Property Code, Section 172 (d).

³ Data Privacy Act of 2012, Section

Please feel free to reach out for clarifications or further concerns.

Yours,

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