

VOLUME: II

CYBERCRIME AND COMPUTER RELATED CRIMES

Part ID: III Procedural Powers (ss 20-28)

CHAPTER: 08:06

[Ch0806s20]20. Preservation order

(1) A

police officer or any person authorised by the Commissioner or by the Director, in writing, may, by written notice, order for the preservation of data that has been stored or processed by means of a computer or computer system or any other information and communication technology, where there are reasonable grounds to believe that such data is vulnerable to loss or modification.

(2)

For the purposes of subsection (1), data includes traffic data and subscriber information.

[Ch0806s21]21. Disclosure of preserved data

A

police officer or any person authorised by the Commissioner or by the Director, in writing, may, by written notice given to a person in control of a computer or computer system, require the person to-

(a) ensure that the data specified in the notice is preserved for the period specified in the notice; or

(b) disclose sufficient traffic data about a specified communication to identify the service provider or the path through which the data was transmitted.

[Ch0806s22]22. Production order

(1) A

police officer or any person authorised by the Commissioner or by the Director, in writing, may apply to a judicial officer for an order compelling-

(a) a person to submit specified data in that person's possession or control, which is stored in a computer or computer system; and

(b) a service provider to submit subscriber information in relation to its services in that service provider's possession or control.

(2)

Where the data in subsection (1) consists of data stored in an electronic, magnetic or optical form on a device, the request shall be deemed to require the person to produce or give access to it in a form in which it can be taken away and in which it is visible and legible.

[Ch0806s23]23. Access, search and seizure

(1)

Where a police officer, or any person authorised by the Commissioner or by the Director, in writing, has reasonable grounds to believe that stored data or

information would be relevant for the purposes of an investigation or the prosecution of an offence, he or she may apply to a judicial officer for the issue of an order to enter any premises to access, search and seize such data or information.

(2) A

police officer or any person authorised by the Commissioner or by the Director, in writing, in the execution of an order issued under subsection (1), shall-

(a) seize or secure a computer or computer system or any information and communication technology medium;

(b) make and retain a copy of such data or information;

(c) maintain the integrity of the relevant stored data or information;

(d) print, photograph, copy or make in any other manner for the purpose of doing an act referred to in paragraph (a); and

(e) render inaccessible or remove the stored data or information from the computer or computer system, or any information and communication technology medium.

[Ch0806s24]24. Real time collection of traffic data

A

police officer or any person authorised by the Commissioner or by the Director, in writing, may apply to a judicial officer, ex parte, for an order-

(a) for the collection or recording of traffic data, in real time, associated with specified communications transmitted by means of any computer or computer system; or

(b) compelling a service provider, within its technical capabilities, to-

(i) effect such collection and recording referred to in subparagraph (a); or

(ii) assist the Police, to effect such collection and recording.

[Ch0806s25]25. Deletion order

The

Director of Public Prosecutions, or any person authorised by him or her, may apply to a judicial officer for an order that data in a computer or computer system or other information communication technology medium which contains pornography, obscene material or child pornography-

(a) be no longer stored on and made available through the computer or computer system or any other medium; or

(b) be deleted or destroyed.

[Ch0806s26]26. Acting without an order

A

police officer of the rank of sergeant or above such rank may act without applying for an order under this Act if such application would result in an undue delay in the investigation of any offence under this Act.

[Ch0806s27]27. Limited use of disclosed data and

information

(1)

Data obtained under this Act by a police officer, or any person authorised by the Commissioner or by the Director, in writing, shall be used for the purpose for which the data was originally sought, unless such data is sought-

(a) in accordance with any other enactment;

(b) in compliance with an order of court;

(c) in the prevention of injury or other damage to the health of a person or serious loss of or damage to property; or

(d) in the public interest.

(2)

Subject to subsection (3), on request, a police officer or any person authorised by the Commissioner or by the Director, in writing, shall permit a person who had the custody or control of a computer or computer system to access and copy computer data on the computer or computer system.

(3) A

police officer or any person authorised by the Commissioner or by the Director, in writing, may refuse to give access to computer data or provide copies of such computer data if he or she has reasonable grounds for believing that giving access, or providing the copies-

(a) would constitute a criminal offence; or

(b) would prejudice-

(i) the investigation in connection with which the search was carried out; or

(ii) another ongoing investigation; or

(iii) any criminal proceedings that are pending or that may be brought in relation to any of those investigations.

[Ch0806s28]28. Non-compliance with order or notice

A

person who fails to comply with an order or notice issued under this Part commits an offence and shall on conviction be liable to a fine not exceeding P20,000 or to imprisonment for a term not exceeding one year, or to both.