



Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

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**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

- versus -

**CRIMINAL CASES NOS.**  
**SB-16-CRM-0077 to 0084**  
**SB-16-CRM-0439 to 0453**

**JEJOMAR C. BINAY, SR., ET AL.**  
*Accused.*

X - - - - - X

Present:

**CABOTAJE-TANG, A.M.,**  
*P.J./Chairperson*  
**FERNANDEZ, B.R., J,**  
**MORENO, R.B., J.**

*Promulgated on:*

FEBRUARY 7, 2024

X - - - - - X

**RESOLUTION**

**FERNANDEZ B. R., J.**

This treats the two Motions, both principally seeking for the production and inspection of documents gathered by the Special Panel of Investigators (Special Panel) of the Office of the Ombudsman during the conduct of its fact-finding investigation - one filed by movant-accused Efren M. Canlas dated October 16, 2023 and another filed by movant-accused Orlando M. Mateo dated October 24, 2023.

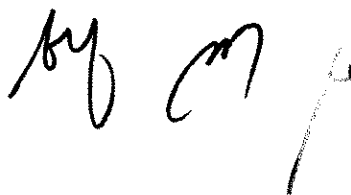
Let us consider the two Motions in *seriatim*.

Motion for Production  
and Inspection of  
Documents of movant-  
accused Efren M. Canlas  
dated October 16, 2023

In support of the prayer, movant-accused Canlas alleges the following - - (1) that prosecution witness Atty. Henson admitted that the Special Panel inquired about the architectural and building plans of the Makati City Hall Parking Building II (MCHPB II) only from Engr. Mario Hechanova and not from any other office of the local government of Makati City; (2) that prosecution witness Atty. Henson claimed, without explanation, that the list or inventory of all the documents obtained by the Special Panel from the Senate and the Commission on Audit (COA) is confidential, thus, refused to divulge it; (3) that the production and disclosure of the list or inventory of the documents and the documents themselves obtained by the Special Panel from the Senate and the COA are not confidential and should not be kept secret from the Court, the accused, and the public; (4) that the disclosure of the list and the documents themselves is essential to affording the accused the right to due process and obtaining justice in these cases; (5 ) that this trial has already negatively impacted the livelihood of accused-movant Canlas; and, (6) that the production of the list of the documents gathered by the Special Panel and be available for inspection and reproduction is pursuant to Rule 27 of the Rules of Court.

When given time (Minutes, October 17, 2023), the prosecution, in its Opposition dated October 24, 2023, clarified that the allegation of movant-accused Canlas that the Special Panel inquired only from Engr. Hechanova is inaccurate. Prosecution witness Atty. Henson repeatedly answered during trial that the Special Panel secured documents pertaining to the procurement and implementation of the MCHPB II from the COA Fraud Audit Office and the Senate Blue Ribbon Committee and that Engr. Hechanova was only one of the sources of information.

It adds that the testimony of its witness, Atty. Henson, to produce the list requested by the defense was a reservation, not a refusal. This is based on the "confidentiality rule" provided for in Office Circular No. 01, series of 2015, of the Office of the Ombudsman.

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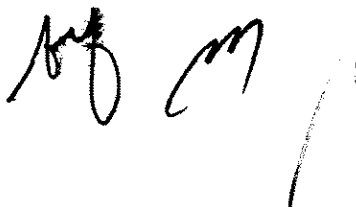
The prosecution further explains the nature of a fact-finding investigation as a discreet and non-adversarial procedure, and does not prejudice the rights of any person. In fact, it is conducted to validate information or allegations prior to the filing of formal charges for preliminary investigation and administrative adjudication. The process, therefore, should remain confidential and not known to the public.

Furthermore, the suggestion that any fact-finding investigator may suppress evidence does not deserve consideration because the findings of the Special Panel are merely recommendatory. These same findings are submitted to the Ombudsman, as the final approving authority. The persons concerned will have their chance to rebut the allegations and present their own evidence during the preliminary investigation and administrative adjudication process.

It also alleges the inapplicability of Rule 27 of the Rules of Court. Instead, the prosecution maintains that the applicable rule in criminal cases relating to the production or inspection of documents or things is Sec. 10, Rule 116 of the Rules of Criminal Procedure.

The prosecution further alleges that the purpose for the production of the documents under the applicable Rule in criminal cases is to prevent surprise, suppression, or alteration. These are not attendant in these cases. The source documents, all public documents, are readily available to movant-accused Canlas and can be secured from the originating public offices.

Moreover, the prosecution insists that the source documents originated from the Senate Blue Ribbon Committee and from the local government of Makati City. The originals or photocopies of relevant documents sourced from the local government of Makati City were, thereafter, transmitted to the Commission on Audit (COA). Thus, only certified true copies of the documents were transmitted by the COA or the Senate Blue Ribbon Committee to the Special Panel for its fact-finding investigation. Hence, the Special Panel does not have official possession, custody or control of the documents concerned.



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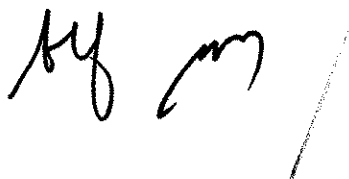
Manifestation and Motion  
(Re: Production and  
Inspection of Documents)  
of movant-accused Orlando  
M. Mateo dated October 24,  
2023

In his own Motion, movant-accused Mateo grounds his prayer alleging the following - - (1) that prosecution witness Atty. Henson admitted that not all the documents gathered by the Special Panel during the fact-finding investigation were attached to its Complaint; (2) when prosecution witness Atty. Henson was confronted with several official documents pertaining to the plan, design, construction, and post-construction of the Makati City Hall Parking Building Project, she conveniently claimed that due to the voluminous records of the case, she could not recall if she had come across those documents, thus preventing the cross-examining parties from propounding additional questions relating thereto; (3) there is good reason to believe that unless Atty. Henson is directed to produce all documents that they gathered during their fact-finding investigation, whether from the Commission on Audit, the Senate Blue Ribbon Committee, and other government agencies and/or offices, or a list thereof, under oath, she could easily avoid probing and relevant questions relating to documents, which the Special Panel ought to have been furnished, by the sheer expedient of claiming that she could not recall said documents; and, (4) Section 6 (*sic*), Rule 131 of the Rules of Court provides for the adverse inference and legal presumptions that evidence suppressed would be adverse if produced.

Additionally, movant-accused Mateo claims that he, as with all other accused, should be given an opportunity to examine the documents that prosecution witness Atty. Henson and/or the Special Panel withheld from its Complaint, and be allowed to probe her on the same.

He also adopts the arguments of movant-accused Canlas in his own Motion dated October 16, 2023.

When given time (Minutes, October 25, 2023), the prosecution, in its Opposition dated November 15, 2023, also adopted the arguments it raised in its Opposition dated October 24, 2023, in response to the Motion of movant-accused Efren M. Canlas.

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In addition, the prosecution stresses that a preliminary investigation was conducted in these cases. Movant-accused Mateo and his co-accused were furnished with copies of the Complaint of the Special Panel together with its attachments, thereby making them aware of the charges against them. The accused were then given the opportunity to examine the documents in support of the charges. The accused were also given the opportunity to present controverting evidence, if any, such as securing them during the preliminary investigation to point out that the findings of the Special Panel did not consider all relevant documents.

We now rule jointly.

At the onset, it would be best to recall the concept of a fact-finding investigation.


In Sec. 1 of Administrative Order No. 1, series of 2020, of the Office of the Ombudsman described the nature of a fact-finding investigation, to wit - -

Sec. 1. Nature of Fact-Finding Investigation. – All complaints which are not supported by material evidence but contain sufficient verifiable leads to warrant case build-up shall be subjected to a fact-finding inquiry. Such investigation is non-adversarial in nature and may not be relied upon to create any rights, substantive or procedural, enforceable by law by any party in any matter, civil, administrative or criminal. Notwithstanding the pendency of a fact-finding investigation, the subject of the complaint or the respondent shall not be prejudiced in any manner, particularly as regards securing an Ombudsman clearance. For this purpose, the proceedings of a fact-finding investigation shall not be docketed as a pending case.

This is enshrined in jurisprudence, particularly in *Cagang vs. Sandiganbayan* (G. R. Nos. 206438 and 206458, July 31, 2018 and G. R. Nos. 210141-42, July 31, 2018) and recently in *Jaraula vs. Hon. Office of the Ombudsman* (G. R. No. 238506, November 18, 2021), where the Supreme Court clearly ruled that

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When an anonymous complaint is filed or the Office of the Ombudsman conducts a motu proprio fact-finding investigation, the proceedings are not yet adversarial. Even if the accused is invited to attend these investigations, this period cannot be counted since these are merely preparatory to the filing of a formal complaint. At this point,



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the Office of the Ombudsman will not yet determine if there is probable cause to charge the accused (Jaraula vs. Hon. Office of the Ombudsman, G. R. No. 238506, November 18, 2021).

The Supreme Court further reiterated in *Cariño vs. Commission on Human Rights* (G. R. No. 96681, December 2, 1991) and later in *Biraogo vs. The Philippine Truth Commission* (G. R. No. 192935, December 7, 2010) and recently in *Pichay Jr. vs. Office of the Deputy Executive Secretary for Legal Affairs-IAD* (G. R. No. 196425, July 24, 2012) that a - -

Fact-finding is not adjudication and it cannot be likened to the judicial function of a court of justice, or even a quasi-judicial agency or office. The function of receiving evidence and ascertaining therefrom the facts of a controversy is not a judicial function. To be considered as such, the act of receiving evidence and arriving at factual conclusions is a controversy must be accompanied by the authority of applying the law to the factual conclusions to the end that the controversy may be decided or determined authoritatively, finally and definitely, subject to such appeals or modes of review as may be provided by law.

Even the period spent for a fact-finding investigation is not deemed included in the preliminary investigation for the purpose of determining the existence of inordinate delay, because the investigations are not yet adversarial proceedings against the accused (*Paita vs. Task Force Abono Field Investigation Office, Office of the Ombudsman, G.R. No. 235595, December 7, 2022; Cagang, supra; Jaraula, ibid.*).

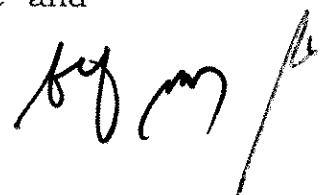
For his part, movant-accused Canlas finds support in Sec. 1, Rule 27 of the Rules of Court as the applicable rule.

We disagree.

Sec. 10, Rule 116 of the Rules on Criminal Procedure is the applicable rule pertaining to the production and inspection of documents in the possession, control and custody of the prosecution or any investigating officer in criminal cases.

It provides, to wit - -

Sec. 10. *Production or inspection of material evidence in possession of prosecution.* – Upon motion of the accused showing good cause and with notice to the parties, the court, in order to prevent surprise, suppression, or alteration, may order the prosecution to produce and



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permit the inspection and copying or photographing of any written statement given by the complainant and other witnesses in any investigation of the offense conducted by the prosecution or other investigating officers, as well as any designated documents, papers, books, accounts, letters, photographs, object, or tangible things not otherwise privileged, which constitute or contain evidence material to any matter involved in the case and which are in the possession or under the control of the prosecution, police, or other law investigating agencies.

On the other hand, movant-accused Mateo erroneously cites Section 6 (*sic*) of Rule 131 of the Rules of Court but quotes Sec. 3 (e) instead. This Section correctly provides - -

Sec. 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x


(e) That evidence willfully suppressed would be adverse if produced;

The contention of movant-accused Mateo deserves scant consideration. It acts on the premise that a suppression of evidence exists. Nothing was presented by movant-accused Mateo to support this.

In *Blue Cross Health Care, Inc. vs. Olivares* (G. R. No. 169737, February 12, 2008), the Supreme Court discussed when this presumption would not apply, to wit - -

Suffice it to say that this presumption does not apply if (a) the evidence is at the disposal of both parties; (b) the suppression was not willful; (c) it is merely corroborative or cumulative; and, (d) the suppression is an exercise of a privilege.

Of import is that the documents sought to be produced and inspected by both movants-accused are not in the official possession, custody, or control of the prosecution. The source documents originated from the Senate Blue Ribbon Committee and from the local government of Makati City. The original or photocopies were then transmitted to the Commission on Audit (COA), and from there, certified true copies were secured and transmitted by the COA and the Senate Blue Ribbon Committee to the Special Panel for the conduct of the fact-finding investigation.



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It also appears that the documents sought to be produced are public documents and are readily available from the originating public offices having official possession, custody, or control thereof.

In fact, as the prosecution claims, even Atty. Villanueva, counsel for some of the accused, was able to secure copies of the documents from the offices concerned.

Furthermore, in *Kara-an vs. Office of the Ombudsman* (G. R. No. 119990, June 21, 2004), the Supreme Court also ruled that - -

Petitioner cannot also compel the Ombudsman to order the production of certain documents, if in the Ombudsman's judgment such documents are not necessary to establish probable cause against the respondents. The Court cannot interfere with the Ombudsman's discretion in determining the adequacy or inadequacy of the evidence before him. The investigation is advisedly called preliminary, as it is yet to be followed by the trial proper. The occasion is not for the full and exhaustive display of the parties' evidence but for the presentation of such evidence only as may engender a well-founded belief that an offense has been committed and that the accused is probably guilty of the offense.

Movants-accused Canlas and Mateo cannot simply claim that they were deprived of due process. We can only reiterate that a fact-finding investigation is not adjudication and it cannot be likened to the judicial function of a court of justice, or even a quasi-judicial agency or office. The function of receiving evidence and ascertaining therefrom the facts of a controversy is not a judicial function (*Cariño, supra*). During the fact-finding investigation stage, the persons subject of this level of investigation are not even considered to have pending Ombudsman cases.

Likewise, in *Jalandoni vs. the Office of the Ombudsman* (G. R. Nos. 211751, 217212-80, 244467-535 and 245546-614, May 10, 2021), the Supreme Court explained that in a preliminary investigation, a person's rights are subject to the limitations of procedural law. At this stage, an information that will put into play the accused's constitutional rights is yet to be filed. This is consistent with the nature and purpose of a preliminary investigation, which "is merely to present such evidence 'as may engender a well-grounded belief that an offense has been committed and that [the respondent in a criminal complaint] is probably guilty






thereof.” It does not involve the “full and exhaustive display of the parties’ evidence.

Finally, We are quick to note that movants-accused Canlas and Mateo, by their respective Motions, attempt to utilize prosecution witness Atty. Henson as their own witness, which this Court cannot countenance.

**WHEREFORE**, premises considered, the Motion for Production and Inspection of Documents of movant-accused Efren M. Canlas dated October 16, 2023 and the Manifestation and Motion (Re: Production and Inspection of Documents) of movant-accused Orlando M. Mateo dated October 24, 2023 are hereby **DENIED** for lack of merit.

**SO ORDERED.**



**BERNELITO R. FERNANDEZ**  
Associate Justice

*We concur:*



**AMPARO M. CABOTAJE-TANG**  
*Presiding Justice/Chairperson*



**RONALD B. MORENO**  
*Associate Justice*