

University of the Philippines Diliman  
DATA PROTECTION TEAM

**MEMORANDUM**

Reference No. DPT 18-12

FOR : **[Redacted]**  
[Redacted]

CC: : **[Redacted]**

SUBJECT : **Health Information Required by [Redacted]**

DATE : 15 May 2018

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Dear [Redacted]:

We respond to your email inquiry reproduced below:

[REDACTED]

**Advisory Opinion**

Based on the facts provided, it appears that [Redacted] has no right to collect health information of all employees of UPD [Redacted] for the following reasons:

- (1) Health information is sensitive personal information which should only be collected and processed for cases allowed by the Data Privacy Act of 2012;
- (2) [Redacted] is violating the data privacy principles of legitimate purpose and proportionality;
- (3) As a government agency, UPD [Redacted] medical records have restricted access which requires a security clearance; and
- (4) [Redacted] has not informed UPD [Redacted] employees of the fact of information collection and its particulars.

It is suggested that your good office coordinate with our [Redacted] for it to represent UPD [Redacted] before the [Redacted]. If necessary, the [Redacted] may also send a letter to [Redacted] to: (1) formally tender UP Diliman's legal position on the matter; and/or (2) demand [Redacted] to cease and desist imposing fines and reimburse fines already collected.

In case the above actions do not yield positive results, then (1) our Data Protection Officer may bring the matter to the National Privacy Commission; and/or (2) the [Redacted] may file necessary cases in court. At this point, it may be premature to determine which recourse should be resorted to.

To facilitate [Redacted] study of the matter, your good office can provide communications and documents from [Redacted] providing details on [Redacted] requirement of having UPD [Redacted] submit medical records of all employees. The requisites of [Redacted] license to operate should be examined.

## Discussion

### *Health information can only be collected in cases allowed by the Data Privacy Act*

Physical examination and laboratory results are health information which are categorized as sensitive personal information<sup>1</sup> under the Data Privacy Act of 2012. Sensitive personal information are afforded higher safeguards for privacy than non-sensitive personal information. As sensitive personal information, physical examination and laboratory results may only be collected by [Redacted] in special cases provided by Section 13 of the Data Privacy Act. These include cases where: (1) the processing of sensitive personal information is provided by laws or regulations; (2) there is a necessity to protect the life and health of the data subject or for medical treatment by a medical practitioner; and (3) the processing is necessary to achieve a lawful and noncommercial objective.<sup>2</sup>

Based on the facts provided, it appears that [Redacted] purpose of issuing a license to operate does not fall under any of the cases allowed by law to require sensitive personal information.

### *[Redacted] is violating the data privacy principles of legitimate purpose and proportionality*

Ostensibly, the [Redacted] purpose of requiring health information is for it to evaluate if UPD [Redacted] license to operate should be renewed. However, [Redacted] may only collect personal information if it has a **legitimate purpose**<sup>3</sup> to process the information and if the collection has **proportionality**<sup>4</sup> to the purpose of [Redacted].

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<sup>1</sup> Data Privacy Act of 2012, Section 3(l).

<sup>2</sup> Data Privacy Act of 2012, Section 13.

<sup>3</sup> Implementing Rules and Regulations of the Data Privacy Act, Section 18(b).

<sup>4</sup> *Idem*, Section 18(c).

**Legitimate Purpose** – Only personal data that is **necessary** and **compatible** with declared, specified, and legitimate purpose may be collected.<sup>5</sup> Health information of all employees of an institution is **not necessary** to evaluate whether a license to operate should be renewed. Further, collecting health information is **not compatible** with the mandate of [Redacted] to generate productive economic activity to include employment, export and investment in the [Redacted].

**Proportionality** – Collection of personal information **should not be excessive** in relation to the purposes for which they are collected and processed.<sup>6</sup> Personal data shall be processed only if the purpose of the processing could not reasonably be fulfilled by other means.<sup>7</sup> Collecting medical records of all employees is **excessive** and **disproportionate** to the purpose of [Redacted].

As there is no legitimate purpose for the excessive collection of information, [Redacted] should not be requiring health information of employees of [Redacted].

*As a government agency, UPD [Redacted] medical records have restricted access which requires a security clearance*

National Privacy Commission Circular No. 16-01 regulates the “Security of Personal Data in Government Agencies”. The University of the Philippines is a state university for the Philippine Islands<sup>8</sup> and is the country’s national university.<sup>9</sup> As a government agency, the repository of medical records of UPD[Redacted] employees have “restricted access”.<sup>10</sup> [Redacted] does not have the required “security clearance” to access these medical records. NPC Circular No. 16-01 states:

**“SECTION 15. Security Clearance.** A government agency shall strictly regulate access to personal data under its control or custody. It shall grant access to agency personnel, through the issuance of a security clearance by the head of agency, only when the performance of official functions or the provision of a public service **directly depends** on such access or **cannot otherwise be performed without such access.**”

[Emphases supplied]

[Redacted] public service of renewing licenses to operate does neither “directly depends” nor cannot be performed without access to medical records of UPD [Redacted].

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<sup>5</sup> *Id.*, Section 19(a)(4).

<sup>6</sup> *Supra* 2, Section 11(d).

<sup>7</sup> *Supra* 4, 18(c).

<sup>8</sup> Act No. 1870.

<sup>9</sup> Republic Act No. 9500, Section 2.

<sup>10</sup> NPC Circular No. 16-01, Section 9.

Hence, not only does [Redacted] lack the necessary security clearance, it also has no right to such clearance.

***[Redacted] has not informed UPD [Redacted] employees of the fact of information collection and its particulars***

[Redacted] has the obligation to inform UPD [Redacted] employees of the fact that their health information are being collected and processed.<sup>11</sup> Equally important is that [Redacted] has the obligation to inform UPD [Redacted] employees of the following:<sup>12</sup>

1. Description of the personal information to be entered into [Redacted] system;
2. Purposes for which they are being or are to be processed;
3. Scope and method of the personal information processing;
4. The recipients or classes of recipients to whom they are or may be disclosed;
5. The identity and contact details of [Redacted] or its representative;
6. The period for which the information will be stored.

In not disclosing the above, [Redacted] has violated the requirement of **transparency**<sup>13</sup> to [Redacted] employees.

**Conclusion**

It is suggested that your good office coordinate with our [Redacted] for it to represent UPD [Redacted] before the [Redacted]. If necessary, the [Redacted] may also send a letter to [Redacted] to: (1) formally tender UP Diliman's legal position on the matter; and (2) demand [Redacted] to cease and desist imposing fines and reimburse fines already collected.

This advisory opinion is based on the facts disclosed. It is suggested that relevant documents and communications be provided for further evaluation of [Redacted] and the Data Protection Team.

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<sup>11</sup> Data Privacy Act, Section 16(a).

<sup>12</sup> *Idem*, Section 16(b).

<sup>13</sup> Implementing Rules and Regulations of the Data Privacy Act,, Section 18(a).

Yours,

Elson B. Manahan  
*Data Protection Officer*  
University of the Philippines Diliman

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