



24 April 2019

### **ADVISORY OPINION**

Reference No. DPO 19-18

FOR : [Redacted]  
[Redacted]

SUBJECT : **Information-Exchange Platform for the Public Sector Survey  
on the current state of public transportation in UP Diliman**

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Dear [Redacted]:

We respond to your request for opinion on the pilot study of the Project Team for Information-Exchange Platform for the Public Sector (housed in the [Redacted]) under the [Redacted] project of the [Redacted]. The pilot study aims to conduct a survey on the current state of public transportation in UP Diliman.

***I. The Project Team and the respondents should be made aware of and adhere to the UP Diliman Privacy Policy for Researchers and Research Subjects.***

The Project Team as well as the respondents should be made aware of and adhere to the **UP Diliman Privacy Policy for Researchers and Research Subjects** as well as the **UP Diliman Data Subject Rights and Responsibilities** both found at <https://upd.edu.ph/privacy>.

The UP Diliman Privacy Policy for Researchers and Research Subjects establishes parameters on the processing of personal data in research conducted in UP Diliman. The UP Diliman Data Subject Rights and Responsibilities establishes the rights and responsibilities of the respondents as data subjects of the research.

The survey form may reproduce pertinent portions of the above policies and direct the respondents to the URL where the full text of these policies may be found.

***II. The processing of personal information should adhere to the data privacy principles of transparency, legitimate purpose and proportionality.***

The survey form collects from respondents personal information<sup>1</sup> and sensitive personal information<sup>2</sup>. As such, data gathering and processing should adhere to the principles of principles of transparency, legitimate purpose and proportionality.<sup>3</sup>

- (1) **Transparency.** The respondent must be aware of the nature, purpose, and extent of the processing of his or her personal data, including the risks and safeguards involved, the identity of personal information controller (i.e. the Project Team for [Redacted] and [Redacted]), his or her rights as data subject of the research, and how these can be exercised. Any information and communication relating to the processing of personal data should be easy to access and understand, using clear and plain language.
- (2) **Legitimate purpose.** The processing of information shall be compatible with a declared and specified purpose which must not be contrary to law, morals, or public policy; and
- (3) **Proportionality.** The processing of information shall be adequate, relevant, suitable, necessary, and not excessive in relation to a declared and specified purpose. Personal data shall be processed only if the purpose of the processing could not reasonably be fulfilled by other means.<sup>4</sup>

It is suggested that the survey form be revisited to ensure that the data gathered from respondents are not excessive<sup>5</sup> for the purposes of the research. Specifically, SECTION 4 of the survey form may be collecting information which are not necessary for the purpose of the research.

***III. The prior written consent of respondents should be obtained. The respondents should be informed of their rights as data subjects.***

Since the study will perform collection, recording, organization and use of personal information and sensitive personal information, the **consent** of the respondents should be obtained.<sup>6</sup> This consent must be obtained *prior*<sup>7</sup> to answering the survey and hence the **consent form** should be positioned in the survey form before the survey questions.

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

<sup>2</sup> *Idem*, Section 3(l).

<sup>3</sup> Implementing Rules and Regulations of the Data Privacy Act of 2012, Section 17.

<sup>4</sup> *Idem*, Section 18.

<sup>5</sup> *Id.*, Section 18(c).

<sup>6</sup> Data Privacy Act of 2012, Section 12.

<sup>7</sup> *Idem*, Section 13(a).

It is suggested that the first page of the survey form contains a consent form. Under the Data Privacy Act of 2012 and its Implementing Rules and Regulations, consent must be:

- (1) Informed;<sup>8</sup>
- (2) Obtained prior to the processing of personal information;<sup>9</sup>
- (3) Specific to the purpose which must be declared, specified, and legitimate;<sup>10</sup>
- (4) Time-bound;<sup>11</sup>
- (5) Evidenced by written, electronic or recorded means.<sup>12</sup>

In addition to having a consent form on the survey form, the respondents should be informed of their following rights as data subjects of the research:

“Section 16. Rights of the Data Subject. – The data subject is entitled to:

(a) Be informed whether personal information pertaining to him or her shall be, are being or have been processed;

(b) Be furnished the information indicated hereunder before the entry of his or her personal information into the processing system of the personal information controller, or at the next practical opportunity:

- (1) Description of the personal information to be entered into the 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) Methods utilized for automated access, if the same is allowed by the data subject, and the extent to which such access is authorized;
- (6) The identity and contact details of the personal information controller or its representative;
- (7) The period for which the information will be stored; and
- (8) The existence of their rights, i.e., to access, correction, as well as the right to lodge a complaint before the [National Privacy] Commission.”<sup>13</sup>

Hence, it is suggested that the survey form contains a section informing respondents of their above-mentioned rights as data subjects. It is worth noting that the survey form as well as

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<sup>8</sup> Implementing Rules and Regulations of the Data Privacy Act of 2012, Section 3 (c).

<sup>9</sup> *Supra*, 7.

<sup>10</sup> Implementing Rules and Regulations of the Data Privacy Act of 2012, Section 19(a).

<sup>11</sup> *Idem*, Section 19(a)(1).

<sup>12</sup> *Id.*, Section 3(c).

<sup>13</sup> Data Privacy Act of 2012, Section 16.

the pollster or surveyor *declares and specifies*<sup>14</sup> to the respondent the purpose of the research.

***IV. To be free from most data privacy prohibitions, it is suggested that the research be intended for a public benefit and only minimally necessary information be processed.***

Most data privacy prohibitions do not apply to personal information processed for research purposes<sup>15</sup> if the following requirements are met:

*First*, the research is “intended for a public benefit”;<sup>16</sup> and

*Second*, the information is processed “only to the minimum extent necessary to achieve the specific purpose”<sup>17</sup> of the research.

Hence, it is suggested that to be free from most data privacy prohibitions, the above requirements should be met by the research.

*First requirement: Public benefit*

It is suggested that survey documents, including the survey form, clearly indicate the specific public benefit intended by the research.

*Second requirement: Process minimally necessary information*

It is suggested that the survey form be revisited to ensure that the data gathered from respondents are the *minimum extent necessary*<sup>18</sup> for the purpose of the research. As stated, SECTION 4 may be a worth reevaluating.

In one case, the National Privacy Commission (NPC) did not allow the Department of Social Welfare and Development (DSWD) to disclose to the Philippine National Police (PNP) the sex, age, and civil status of DSWD’s employees. The NPC reasoned that sex, age, and civil status do not form part of the purpose which exempts PNP from the Data Privacy Act’s prohibitions.<sup>19</sup>

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<sup>14</sup> *Idem*, Section 11(a).

<sup>15</sup> Data Privacy Act of 2012, Section 4(d).

<sup>16</sup> Implementing Rules and Regulations of the Data Privacy Act of 2012, Section 5(c).

<sup>17</sup> *Idem*, Section 5, last paragraph.

<sup>18</sup> *Supra*, 17.

<sup>19</sup> National Privacy Commission Privacy Policy Office Advisory Opinion No. 2017-56, 20 September 2017.

***V. The research output, findings, and its annexes must not disclose identities of specific individuals.***

The research output, findings, and documents to be released (including annexes) should not disclose the identities of specific individuals, including the respondents.

However, there is no prohibition against disclosing *aggregate* or *anonymized data*. In fact, the [Redacted] – from which the Philippine Data Privacy Act was based on – does not consider data to be personal data if it cannot be linked to an individual due to aggregation or anonymization.<sup>20</sup>

Please do not hesitate to reach out for clarifications or further inquiries.

Yours,

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

**Privacy and Confidentiality**

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<sup>20</sup> European Union Data Protection Directive, Recital 26.