

University of the Philippines Diliman
DATA PROTECTION TEAM

MEMORANDUM

Reference No. DPT 18-13

FOR : [REDACTED]

SUBJECT : **Data privacy requirements in investigating contributory factors to disruptions in academic progress of students in the [REDACTED]**

DATE : 15 May 2018

Dear [REDACTED]:

We respond to your inquiry on the applicable data privacy regulations on your study on contributory factors to disruptions in academic progress of students in the UP Diliman [REDACTED].

We understand that data from the last seven (7) years will be consolidated from the following documents created by or about students: (1) letters of appeal for readmission from LOA, AWOL or ineligibility; (2) appeal forms for readmission; (3) student records from the [REDACTED] or [REDACTED]; and (4) online surveys for information not found in the foregoing documents and records.

Advisory Opinion

Letters, accomplished forms, records, grades, and survey information of students may be used and processed in the conduct of the research as long as the following are observed:

- (1) The use, evaluation, and processing of personal information of students should be in line with the research **purpose**. To this end, the research should clearly state its purpose and all acts of data use and analysis should be justifiable by such purpose;
- (2) The research output should **not disclose the identities of students** and only contain aggregate or anonymized data; and
- (3) The intended **public benefit** should be stated in the research output. The University's **ethical standards** should be observed in the conduct of the research.

To avoid the burden of observing the rights of students as data subjects, it is also suggested that the researcher **does not carry out activities and does not take decisions regarding the students** based on the research.

The assisting graduate students and full-time staff of the [REDACTED] who will have access to the documents containing personal information should be required to sign the attached Non-Disclosure and Outsourcing Agreement.

Discussion

The use, evaluation, and processing of personal information of students should be in line with the research purpose

Our primary concern is that the Data Privacy Act of 2012 establishes rules against unauthorized¹ and unnecessary^{2, 3} processing of personal information. “Personal information” are any information which can singly or collectively ascertain the identity of an individual.⁴ The data to be used by the research involves personal information of students such as their names, former academic standings, and grades.

Fortunately, the Data Privacy Act expressly excludes from its scope “Personal information processed for journalistic, artistic, literary or **research purposes**”.⁵ This means that the prohibitions of the law do not apply to acts when done in line with your research’s purposes. To this end, it is suggested that the research output – not just the proposal – should have a clear statement of the research **purpose**. More importantly, it should be ensured that all acts of data use and analysis can be justified by such stated purpose.

The research output should not disclose the identities of students and only contain aggregate or anonymized data

The students’ letters of appeal, appeal forms, and grades are education information which are categorized by law as **sensitive** personal information.⁶ Sensitive personal information are protected with more stringent privacy requirements than non-sensitive personal information.⁷ As such, the research output must not disclose the identities of students as this will divulge

¹ Data Privacy Act of 2012, Section 19(a)(1).

² *Idem*, Section 18(b).

³ *Id.*, Section 18(c).

⁴ *Id.*, Section 3(g).

⁵ *Id.*, Section 4(d).

⁶ Data Privacy Act of 2012, Section 3(l).

⁷ Implementing Rules and Regulations of the Data Privacy Act, Section 13.

education information about them. The research output's mere mention of a student's name already discloses the education information that such individual studied at the UP Diliman [REDACTED] at one point in the last seven (7) years.

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.⁸

The intended public benefit should be stated in the research output. The University's ethical standards should be observed in the conduct of the research

Although the Data Privacy Act excludes research from its scope, its Implementing Rules and Regulations curiously imposes the following requirement in conducting research:

“Section 5. Special Cases. The Act and these Rules shall not apply to the following specified information, only to the minimum extent of collection, access, use, disclosure or other processing necessary to the purpose, function, or activity concerned:

x x x

c. Personal information that will be processed for research purpose, **intended for a public benefit**, subject to the requirements of applicable laws, regulations, or **ethical standards;**”

It is suggested that in addition to having a statement of its purpose, the research should state its intended public benefit⁹ such as identifying the contributory factors to disruptions in academic progress of students in the largest college of the flagship campus of the country's national university¹⁰ to aid current and future plans for remediation.

It is also suggested that the conduct of the research comply with the ethical standards¹¹ for research in the University such as Chapter 5 of the UP Research Guidebook.¹²

⁸ European Union Data Protection Directive, Recital 26.

⁹ *Supra* 7, Section 5.

¹⁰ Republic Act No. 9500, Section 2.

¹¹ Implementing Rules and Regulations of the Data Privacy Act, Section 5.

¹² University of the Philippines Office of the Vice President for Academic Affairs, http://ovpaa.up.edu.ph/wp-content/uploads/2016/03/UP-Research-Guidebook-Version-1_2_22032016.pdf

It is suggested that the researcher does not carry out activities and take decisions on the students based on the research

As data subjects,¹³ the students (to whom the information to be processed pertain to), as a general rule, should be afforded by the researcher the following rights:

- (1) Right to be informed of the fact that their personal information are being processed;¹⁴
- (2) Right to be informed of the following:¹⁵
 - a. Purposes for which their personal information will be processed;
 - b. Scope and method of the personal information processing;
 - c. The recipients or classes of recipients to whom their information may be disclosed;
 - d. The identity and contact details of the researcher or the researcher's representative;
 - e. The period for which their information will be stored.
- (3) Rights of the heirs and assigns of the students to invoke rights allowed by the Data Privacy Act to be transmitted;¹⁶
- (4) Right to data portability, that is, to obtain a copy of data undergoing processing in an electronic or structured commonly used format.

However, the researcher will not be required to observe the four (4) data subject rights enumerated above if the researcher does not carry out activities and does not take decisions that will affect any of the students.¹⁷ This means that as long as the researcher only produces an academic output and does not conduct any positive act or decision that will affect the students, then there is no requirement to observe the data subject rights enumerated above.

This does not mean that the University or the ██████████ cannot undertake steps to prevent disruption of academic progress in *other* students or in *future* dealings with students.

Non-Disclosure and Outsourcing Agreements for graduate students and ██████████ staff

The graduate students and ██████████ staff who will access the documents are classified by law as Personal Information Processors.¹⁸ Since they have access to information which should be kept private, the law requires that they each should be made to sign Outsourcing Agreements¹⁹ that will bind them to the proper conduct in handling personal information. As added security, it is further suggested that they should be also made to execute Non-

¹³ Data Privacy Act of 2012, Section 3(c).

¹⁴ *Idem*, Section 16(a).

¹⁵ *Id.*, Section 16(b).

¹⁶ *Id.*, Section 17.

¹⁷ *Id.*, Section 19.

¹⁸ Data Privacy Act of 2012, Section 3(i).

¹⁹ Implementing Rules and Regulations of the Data Privacy Act, Section 44.

Disclosure Agreements to prohibit disclosure of not just personal information but all kinds of confidential information and trade secrets.

The Outsourcing Agreements and the Non-Disclosure Agreements suggested to be executed are integrated into a single instrument entitled Non-Disclosure and Outsourcing Agreement attached herewith. It is suggested that each graduate student and [REDACTED] staff involved be made to sign four (4) copies of this integrated agreement to be distributed as follows: 2 copies for the notary public, 1 copy for the researcher, and 1 copy for the signing student or staff.

Conclusion

The documents created by or about students of the [REDACTED] may be used in the research as long as the (1) processing of personal information are in line with the research purpose; (2) the research output does not disclose the identities of students; and (3) the intended public benefit is stated in the research output and the conduct of the research adheres to the University's ethical standards.

The graduate students and full-time [REDACTED] staff who will have access to the documents containing personal information should be required to sign the attached Non-Disclosure and Outsourcing Agreement.

Please feel free to reach out for any question or clarification.

Yours,

(Sgd.) Elson B. Manahan
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University of the Philippines Diliman