

University of the Philippines Diliman
DATA PROTECTION TEAM

MEMORANDUM

Reference No. DPT 18-14

FOR : [REDACTED]
[REDACTED]
[REDACTED]

SUBJECT : **Disclosure of SALNs of [REDACTED]**
DATE : 14 June 2018

Dear [REDACTED], [REDACTED], and [REDACTED]:

We provide our opinion on data privacy aspects of the inquiry whether the University of the Philippines Diliman (the “University” or “UP Diliman”) may disclose the Statements of Assets, Liabilities and Net Worth (SALNs) of [REDACTED] to [REDACTED].

FACTS

- On 14 May 2018, [REDACTED] made the following request to the Presidential Communications Operations Office (PCOO) through the Freedom of Information website at www.foi.gov.ph:

“May I request the University of the Philippines Diliman Resources [REDACTED] to certify for what years current Supreme Court associate justice [REDACTED] had filed his Statement of Assets and Liabilities when he was in various capacities employed at the UP. I would also like a copy of the SALNs he has filed.”

- [REDACTED] is a columnist of [REDACTED], author of politically-themed books, and a former Philippine ambassador to Greece and Cyprus.
- [REDACTED] did not state in what capacity he is requesting for.
- [REDACTED] request did not state the purpose of his request.
- In a letter dated 01 June 2018, the PCOO referred the request to the UP Diliman [REDACTED] Office [REDACTED].

- The ██████ referred the matter to the UP Diliman ██████ Office ██████ which in turn referred the matter to the UP System Data Protection Officer.
- On 11 June 2018, the ██████ referred the matter to the UP Diliman Data Protection Officer.

ADVISORY OPINION

The SALNs currently cannot be disclosed to ██████. Since ██████ did not state the *purpose* of his request, the University cannot evaluate if the SALNs are *necessary* for a *legitimate interest*.

While the Data Privacy Act strictly regulates disclosure of SALNs, other applicable rules favor disclosure of SALNs for transparency and accountability in the government. To not impair the aim of government transparency of other applicable rules and to avoid rendering a premature conclusion that ██████ purpose is not necessary for a legitimate interest, **it is suggested that the University inquires with ██████ the purpose of his request.** This inquiry should **use neutral language to avoid leading or influencing ██████ to offer a justification** which does not accurately depict his true purpose.

The purpose to be provided by ██████ should further be evaluated by the University to ascertain that ██████ intended *processing* of the information in the SALNs adhere to the data privacy principles of *transparency, legitimate purpose, and proportionality*.

Should the University decide to release the SALNs, then the University has the obligation to only provide copies of SALNs filed by ██████ ten (10) years prior to the date of ██████ request; that is, *SALNs filed by ██████ from 15 May 2008 onwards*.

Before copies of SALNs can be released to ██████, he has the obligation to pay a *reasonable fee* to cover the University's cost of reproduction, mailing, and certification of SALNs.

The issue of whether the guidelines in Supreme Court AM No. 09-8-6-SC is applicable to the request at hand is not a data privacy matter and hence beyond the jurisdiction of the UP Diliman Data Protection Officer.

This opinion is primarily on the data privacy aspects of the request at hand. While this opinion discusses non-data privacy laws for the sake of a comprehensiveness, the UP Diliman Data Protection Officer does not have jurisdiction to render final legal opinions on issues not related to data privacy.

Other non-data privacy considerations such as legal, reputational, and political factors should be evaluated in deciding the University's courses of action.

DISCUSSION

██████████ request can be dissected into two (2) sub-requests:

- (1) Request for copies of the SALNs filed by ██████████; and
- (2) Inquiry on which years ██████████ filed SALNs during his service in UP Diliman.

The laws and data privacy principles relevant to the above two requests are the same. In the course of the discussions below, references to the request for ██████████ SALNs should be interpreted to include and subsume the inquiry on which years ██████████ filed such SALNs.

Basis of the request

██████████ request and PCOO's referral are based on the Freedom of Information Executive Order (FOI EO) which generally allows access to information, official records and public records, stating:

“SECTION 3. Access to information. Every Filipino shall have access to information, official records, public records and to documents and papers pertaining to official acts, transactions or decisions, as well as to government research data used as basis for policy development.

x x x

SECTION 5. Availability of SALN. Subject to the provisions contained in Sections 3 and 4 of this Order, all public officials are reminded of their obligation to file and make available for scrutiny their Statements of Assets, Liabilities and Net Worth (SALN) in accordance with **existing laws, rules and regulations**, and the **spirit and letter of this Order.**”

[Emphases Supplied]

Section 5 of the above FOI EO reminds public officials of their “obligation to make available for scrutiny” their SALNs. However, such obligation should be in accordance with:

- (1) “existing laws, rules and regulations”; and
- (2) “the spirit and letter of this Order.”

The “*spirit and letter*” of the FOI EO, among others, is to operationalize the constitutional “right of the people to information on matters of public concern” and to “enhance transparency and accountability in government official acts, transactions, or decisions”.¹ Hence, the spirit of the FOI EO favors the disclosure of SALNs.

¹ Executive Order No. 2, Series of 2016, third WHEREAS Clause.

The “*existing laws, rules and regulations*” include the Code of Conduct and Ethical Standards for Public Officials and Employees² (the “Code of Conduct of Public Employees”) which is the primary law mandating SALNs. It states:

“Section 8. Statements and Disclosure. – Public officials and employees have an obligation to accomplish and submit declarations under oath of, and **the public has the right to know, their assets, liabilities, net worth** and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.”

[Emphasis Supplied]

Hence, **the general rule under the primary law governing SALNs is that SALNs may be disclosed.**

Also among the “*existing laws, rules and regulations*” in the FOI EO which regulate the disclosure of SALNs is the Data Privacy Act of 2012³. Before the Data Privacy Act is applied, it must be determined if the request at hand is within the scope of the Data Privacy Act.

Applicability of the Data Privacy Act

The Data Privacy Act exempts from its scope certain private information about individuals who are or were government officers or employees; it states:

“Section 4. *Scope.* –

x x x

This Act does not apply to the following:

(a) Information about any individual who is or was an **officer or employee of a government institution that relates to the position or functions** of the individual, including:

(1) The fact that the individual is or was an officer or employee of the government institution;

(2) The title, business address and office telephone number of the individual;

(3) The classification, **salary range** and responsibilities of **the position** held by the individual; and

² Republic Act No. 6713.

³ Republic Act No. 10173.

(4) The name of the individual on a document prepared by the individual in the course of employment with the government;”⁴

[Emphases Supplied]

This means that the Data Privacy Act’s requirement to keep personal information private does not apply to information that relates to the (1) position; and (2) functions of a current or former government officer or employee. The contrapositive of this is that information that neither relate to the position nor the functions of a government employee are still protected by the Data Privacy Act.

The information on a SALN are about an individual’s financial status. A government employee’s financial status is not related to his/her position or functions because qualifications for a position do not have financial requirements and job functions are not dependent on one’s financial status. As a matter of fact, SALNs contain information on assets and liabilities acquired even *before* the individual became a government employee – this renders information on SALNs not related to the position and functions of a government employee.

Since SALNs contain information which neither relate to the position nor functions of a government employee, then **disclosure of SALNs are regulated by the Data Privacy Act.**

This is affirmed by the fact that the Data Privacy Act only allows the disclosure of the mere “salary range”⁵ of the position of a government employee and not his specific salary. If the Data Privacy Act does not allow disclosure of a government employee’s specific salary, then it is only logical that it also does not allow full disclosure of the details of one’s assets and liabilities.

SALNs must be disclosed for a legitimate interest

Since the request at hand is within the scope of the Data Privacy Act, then ██████████ must comply with the requisites to allow the disclosure of personal information. Because ██████████ is a third party in relation to ██████████ and the University of the Philippines, the provision that is most relevant to him is Section 12(f) of the Data Privacy Act which states:

“SEC. 12. Criteria for Lawful Processing of Personal Information. – The processing of personal information shall be permitted only if not otherwise prohibited by law, and when at least one of the following conditions exists:

x x x

⁴Data Privacy Act, Section 4.

⁵*Supra* 6, Section (4)(a)(3).

(f) The processing is **necessary for the purposes of the legitimate interests pursued by the personal information controller or by a third party or parties to whom the data is disclosed**, except where such interests are overridden by fundamental rights and freedoms of the data subject which require protection under the Philippine Constitution.”

[Emphases Supplied]

This means that before personal information is disclosed, the requesting third party must have a *purpose*. This purpose must be a *legitimate interest*. The requested information must be *necessary* for this legitimate interest.

██████████ was not able to show that his purpose for requesting the SALNs are necessary for a legitimate interest since he did not mention any purpose at all. Hence, **under the Data Privacy Act, the University currently cannot disclose the SALNs for lack of a purpose.**

UP System Data Protection Officer ██████████ keenly observed that ██████████ attacked ██████████ a number of times in his newspaper columns. In a Manila Times column, ██████████ stated that “*I bet ██████████ has also not been filing his SALNs*”.⁶ It may be the case the ██████████ is fishing for evidence to use against ██████████. In Administrative Memorandum No. 09-8-6-SC, the Supreme Court categorized that “to fish for information” is an act which is “not made in good faith and for a legitimate purpose”⁷ **If ██████████ is merely fishing for information, then he has no legitimate purpose and copies of the SALNs cannot be provided to him.**

Harmonizing the Data Privacy Act with other laws

The prohibition of the Data Privacy Act should be harmonized with the “spirit and letter” of the FOI EO and the Code of Conduct of Public Employees which both favor disclosure of SALNs for transparency and accountability of government employees.

To comply with the requirements of the Data Privacy Act *while at the same time* not impairing the transparency sought by the Code of Conduct of Public Employees, it is suggested that ██████████ be granted the opportunity to provide the purpose of his request for the University to determine if such purpose warrants the disclosure of SALNs.

The following are suggested:

- (1) Inquire with ██████████ what the *purpose* of his request is.
- (2) Determine whether:

⁶ The Manila Times Online; <http://www.manilatimes.net/death-of-democracy-death-of-reason-in-the-yellows-silly-minds/399485/>

⁷ Re: Request for Copy Of 2008 Statement of Assets, Liabilities and Net Worth [SALN] and Personal Data Sheet or Curriculum Vitae of the Justices of the Supreme Court and Officers and Employees of the Judiciary, A.M. No. 09-8-6-SC, June 13, 2012.

- a. The purpose provided by ██████████ is a *legitimate interest*; and
 - b. ██████████ SALNs are *necessary* to pursue the legitimate interest provided by ██████████.
- (3) Evaluate whether ██████████ prospective processing of the information in the SALNs adhere to the *data privacy principles* discussed hereafter.

By inquiring with ██████████, the University will not be accused of readily jumping to the presumption that ██████████ purpose is not necessary for a legitimate interest.

In inquiring about ██████████ purpose for his request, the University should use neutral language to avoid leading or influencing him to an answer. For example, the University should not state “please provide us a legitimate purpose” because this may stimulate ██████████ to provide an answer that does not accurately reflect the plain truth. The University should also avoid statements like “please be reminded that fishing for information is not allowed” because this may induce ██████████ to concoct a justification which is not necessarily his true purpose.

After ██████████ provides his purpose, the University should determine if such purpose is a legitimate interest. Thereafter, **the University should determine if the SALNs are necessary to pursue a demonstrated legitimate interest.**

Adherence to Data Privacy Principles

If the purpose to be provided by ██████████ shows that the SALNs are necessary for a legitimate interest, then the next step for the University is to evaluate if ██████████ prospective *processing* of information – as learned from the purpose of his request – will adhere to the *data privacy principles* of transparency, legitimate purpose, and proportionality.

Transparency – If the University will provide ██████████ the SALNs, ██████████ must be informed of such matter and the “nature, purpose, and extent” of ██████████ processing of ██████████ personal data, including the risks and safeguards involved. ██████████ must also be informed of his rights as a data subject.⁸

Legitimate purpose – ██████████ processing of information must be compatible with a declared and specified purpose which must not be contrary to law, morals, or public policy. This requirement mirrors the above-discussed requirement of “legitimate interest”.

Proportionality – ██████████ processing of information shall be adequate, relevant, suitable, necessary, and not excessive in relation to his declared and specified purpose. ██████████ may only process the SALNs if his purpose of the processing could not reasonably be fulfilled by other means.⁹ This may be the most stringent requirement against ██████████ as

⁸ *Idem*, Sections 34-36.

⁹ *Idem*, Section 18(c).

he must demonstrate that his purpose cannot be reasonably be accomplished in some other manner without the SALNs.

The purpose to be provided by [REDACTED] should demonstrate to the University that **his intended processing of the information in the SALNs adhere to the data privacy principles of transparency, legitimate purpose, and proportionality.**

SALNs to Provide

If after evaluation of [REDACTED] declared purpose, the University finds his's prospective processing of the information in the SALNs to adhere to the above data privacy principles, the next step is to determine which SALNs the University is required to provide.

If the University will provide [REDACTED] copies of the SALNs, the University only has the obligation to provide those received by the University from [REDACTED] ten (10) years prior to the date of [REDACTED] request which was on 14 May 2018. The Code of Conduct of Public Employees¹⁰ states:

“Section 8. Statements and Disclosure –

x x x

(C) Accessibility of documents. –

x x x

(4) Any statement filed under this Act shall be available to the public for a period of ten (10) years after receipt of the statement. After such period, the statement may be destroyed unless needed in an ongoing investigation.”

If the University finds it proper to provide the SALNs, **the University only has the obligation to provide SALNs filed by [Redacted] from 15 May 2008 onwards.**

Payment of Fee

In addition to the obligation to adhere to the abovementioned data privacy principles, [REDACTED] has the obligations to pay a fee for his request. The Code of Conduct of Public Employees¹¹ states:

“Section 8. Statements and Disclosure –

x x x

¹⁰ Republic Act No. 6713.

¹¹ Republic Act No. 6713.

(C) Accessibility of documents. –

x x x

(3) Any person requesting a copy of a statement shall be required to pay a reasonable fee to cover the cost of reproduction and mailing of such statement, as well as the cost of certification.”

Before copies of SALNs can be released to [REDACTED], he has the **obligation to pay a reasonable fee to cover the University’s cost of reproduction, mailing, and certification of SALNs.**

Other guidelines that may be applicable

UP System Data Protection Officer [REDACTED] raised the point that the following guidelines under Supreme Court A.M. No. 09-8-6-SC:¹²

1. **All requests shall be filed with the Office of the Clerk of Court of the Supreme Court**, the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals; for the lower courts, with the Office of the Court Administrator; and for attached agencies, with their respective heads of offices.
2. Requests shall cover only copies of the latest SALN, PDS and CV of the members, officials and employees of the Judiciary, and may cover only previous records if so specifically requested and considered as justified, as determined by the officials mentioned in par. 1 above, under the terms of these guidelines and the Implementing Rules and Regulations of R.A. No. 6713.
3. In the case of requests for copies of SALN of the Justices of the Supreme Court, the Court of Appeals, the Sandiganbayan and the Court of Tax Appeals, the authority to disclose shall be made by the Court En Banc.
4. **Every request shall explain the requesting party’s specific purpose and their individual interests sought to be served; shall state the commitment that the request shall only be for the stated purpose; and shall be submitted in a duly accomplished request form secured from the SC website.** The use of the information secured shall only be for the stated purpose.
5. In the case of requesting individuals other than members of the media, their interests should go beyond pure or mere curiosity.
6. **In the case of the members of the media, the request shall additionally be supported by proof under oath of their media affiliation and by a similar certification of the**

¹² *Supra*, 10.

accreditation of their respective organizations as legitimate media practitioners.

7. The requesting party, whether as individuals or as members of the media, must have no derogatory record of having misused any requested information previously furnished to them.

The requesting parties shall complete their requests in accordance with these guidelines. The custodians of these documents (the respective Clerks of Court of the Supreme Court, Court of Appeals, Sandiganbayan, and Court of Tax Appeals for the Justices; and the Court Administrator for the Judges of various trial courts) shall preliminarily determine if the requests are not covered by the limitations and prohibitions provided in R.A. No. 6713 and its implementing rules and regulations, and in accordance with the aforesaid guidelines. Thereafter, the Clerk of Court shall refer the matter pertaining to Justices to the Court En Banc for final determination.”

[Emphases Supplied]

██████████ has good reason to view that the above guidelines are applicable to ██████████ request at hand. It may also be viewed that the above requirements are only applicable to requests for SALNs of government employees *filed to the Supreme Court and other courts as members in the judiciary*. It can be opined that since the requested SALNs of ██████████ were *filed with the UP Diliman ██████████ as a UP Diliman employee*, then the above guidelines for courts are not applicable to the request at hand. The issues of whether the SALNs should be requested from the Supreme Court and whether the above guidelines are applicable to the request at hand is not data privacy matter. Hence, **such issues are beyond the jurisdiction of the UP System and UP Diliman Data Protection Officers to decide upon.**

Conclusion

Aside from data privacy regulations, other considerations such as legal, reputational, and political factors should be evaluated before the University decides on its courses of action.

The SALNs currently cannot be disclosed to ██████████ since ██████████ did not state the purpose of his request. It is suggested that the University inquires with ██████████ the purpose of his request. This inquiry should use neutral language to avoid leading or influencing ██████████ to offer a justification which does not accurately depict his true purpose.

Should the University decide to release the SALNs, then the University has the obligation to only provide copies of SALNs filed by [REDACTED] from 15 May 2008 onwards.

[REDACTED], he has the obligation to pay the University a reasonable fee before copies of the SALNs can be provided.

This opinion is primarily on the data privacy aspects of the request at hand. The UP Diliman Data Protection Officer does not have jurisdiction to render final legal opinions on issues not related to data privacy.

Yours,

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