

University of the Philippines Diliman
DATA PROTECTION TEAM

12 December 2018

Reference No. DPT 18-24

FOR

:

[REDACTED]

SUBJECT

:

**Request for Confirmation on the Applicability of the Scope of
the Data Privacy Act of 2012 to the University of the Philippines**

Dear [REDACTED]:

The Data Protection Team views that the University of the Philippines is not exempt *per se* from the Scope of the Data Privacy Act of 2012.

However, we acknowledge that we have no jurisdiction to interpret laws and make opinions thereon. [REDACTED] our following view:

The University of the Philippines (UP) by itself is not excluded from the scope of the Data Privacy Act of 2012 (DPA).

Section 4 of the DPA and Section 5 of the Implementing Rules and Regulations of the DPA (DPA-IRR) define the Scope of data privacy laws. The relevant exclusion in the DPA applicable to UP is:

“SEC. 4. Scope. –

x x x

This Act does not apply to the following:

x x x

(e) Information necessary in order to carry out the functions of public authority which includes the processing of personal data for the performance by the independent, central monetary authority and law enforcement and regulatory agencies of their constitutionally and statutorily mandated functions...”

The legal doctrine of *Ejusdem Generis* elucidates that the type of governmental authority contemplated by DPA Section 4(e) are those of the same class as monetary and law enforcement authorities and not educational institutions such as UP.

The Supreme Court ruled that “the term public authority refers to a person in authority” (*People v. Rodil*, G.R. No. L-35156, November 20, 1981). The case of *People v. Mendoza* (G.R. No. L-39275, December 20, 1933) defines a “person in authority” as follows:

“Article 152 of the Revised Penal Code defines a person in authority as follows:


In applying the provisions of the preceding and other articles of this Code, any person directly vested with jurisdiction, whether as an individual or as a member of some court or governmental corporation, board or commission, shall be deemed a person in authority.

The word „authority” has been given a restricted meaning in the case of *United States vs. Smith* (39 Phil., 533), so as to include only persons who perform some of the functions of the Government of the Philippine Islands and who according to the aforesaid article, are directly vested with jurisdiction. By „directly vested jurisdiction” is meant „the power or authority to govern and execute the laws, particularly the authority vested in the judges to administer justice, that is, to try civil or criminal cases or both, and to render judgment thereon in accordance with the law” (Escriche, *Rational Dictionary of Legislation and Jurisprudence*, p. 1154); and „authority” as well as „directly vested jurisdiction” are two things which should be conferred by law.”

“Public authority” contemplates a natural person with the power to govern and execute laws. UP does not possess these as its primary characteristics. Hence, UP is not a public authority exempted from the scope of the DPA.

It should be noted that although UP is not exempt from the Scope of the DPA *per se*, its specific acts may be exempted such as processing of personal information “for journalistic, artistic, literary or research purposes” (DPA Section 4(d)).

In case a specific act of UP is exempted from the Scope of data privacy laws, it is exempted “only to the minimum extent necessary to achieve the specific purpose, function, or activity” (DPA-IRR, Section 5).

Please feel free to reach out for questions or clarifications .

Yours truly,

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