



28 January 2019

**ADVISORY OPINION**

Reference No. DPO 19-02

FOR : [REDACTED]

CC : [REDACTED]

SUBJECT : **Request for Educational Information for Journalistic Purposes**

Dear [REDACTED]:

We address your request for recommendation for appropriate action on the attached request letter of [REDACTED] writer and researcher [REDACTED] for “information on [REDACTED] or [REDACTED] who graduated with [REDACTED].”

The request intends “to verify the information she has provided on her public profile, and get additional information, such as years of stay in UP-Diliman, year of graduation, the complete name of the course that she took, and Latin honors or academic distinctions received (if applicable).”

**OPINION**

The following courses of action are suggested:

(1) Reply to the journalist

Prior to any action, the identity and authority of the journalist should be confirmed by asking for a certification from his immediate supervisor and copies of their respective [REDACTED] IDs.

After the identity and authority of the journalist has been confirmed, the University should ask the journalist for the specific public profile referred to and the specific items of information in such profile sought to be verified. The legal requirement that only *minimally necessary*

information may be processed constrains the University to disclose only specifically identified information. Indiscriminately disclosing information will facilitate the wrongful act of fishing for information.

- (2) Each specifically identified information should be evaluated if minimally necessary for the declared journalistic purpose.

UP Diliman's Freedom of Information (FOI) Decision Maker and Data Protection Officer should mutually evaluate which of the requested items of information are minimally necessary for the declared journalistic purpose.

- (3) Afford ████████ her "right to be informed" under the Data Privacy Act

Notify ████████ of that the University shall release specific items of information about her for journalistic purposes. ████████ should be notified only after (1) the journalist has identified the specific items of information sought to be verified; (2) UP Diliman's FOI Decision Maker and Data Protection Officer have cleared for release the specific items of information.

- (4) Release minimally necessary information

The information that can be released should only be those deemed by both UP Diliman's FOI Decision Maker and Data Protection Officer to be minimally necessary for the journalistic purpose. Along with the releases of information, the journalist should be reminded to continue protecting the data privacy of ████████ in compliance with the Data Privacy Act.

### **Considerations**

The following factors should be considered in determining the appropriate course of action:

1. The interplay of rights and obligations of the University and the requester under:
  - a. Constitutional freedom of the press;
  - b. Executive order on Freedom of Information; and
  - c. Data Privacy Act of 2012.
2. What information ████████ "provided on her public profile";
3. The legitimacy of a journalist attempting to "get additional information";
4. The right of ████████ to be informed that her information shall be disclosed; and
5. The extent of information to be disclosed.

## **Discussion**

The constitutional freedom of the press<sup>1</sup> and the Freedom of Information (FOI) Executive Order<sup>2</sup> grants journalists the right to information. Even the Data Privacy Act protects journalists from revealing their sources.<sup>3</sup> However, it should be noted that these rights are granted to journalists and not the University *per se*. These rights should also be balanced with the data privacy *obligations* of the University as a Personal Information Controller.<sup>4</sup>

Prior to any action, it is suggested that the University confirms that the requester is indeed conducting journalistic work for ██████████ by asking for a certification from his immediate supervisor and copies of their respective ██████████ IDs. It is suggested that we do not reach out to ██████████ editors for this simple act of confirmation as such may be misinterpreted as the University purposely paving a difficult road to ██████████.

***The requester should be specific which “public profile” is referred to and what information in such profile the University is requested to verify.***

The Data Privacy Act exempts from its prohibitions personal information processed for journalistic purposes.<sup>5</sup> However, this exemption applies “only to the minimum extent necessary to achieve the specific purpose, function, or activity.”<sup>6</sup> This means that data privacy prohibitions on disclosure are not applicable to the University as long as the information disclosed are only those minimally necessary for the purpose of the journalist. This purpose should both be *specific*<sup>7</sup> and *legitimate*.<sup>8</sup>

The journalist indicated two purposes of the request:

- (1) “to verify the information she has provided on her public profile”; and
- (2) “get additional information”.

For the first purpose of the request, it was not specific in that the University does not know which “public profile” ██████████ supposedly provided information to and what information are being verified by the requester. The University cannot disclose information by second-guessing which specific information are being verified because of the legal requirement that only minimally necessary information can be processed. It may even be the case that there is no public profile or widespread perception that ██████████ is a UP ██████████ or that ██████████ never claimed to be one.<sup>9</sup> Whether or not there is a public profile or personal

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<sup>1</sup> 1987 Constitution of the Philippines, Article III, Section 4.

<sup>2</sup> Executive Order No. 2, s. 2016.

<sup>3</sup> Data Privacy Act of 2012, Republic Act No. 10173, Section 5.

<sup>4</sup> *Idem*, Section 3(h).

<sup>5</sup> Data Privacy Act of 2012, Section 4(d).

<sup>6</sup> Implementing Rules and Regulations of the Data Privacy Act of 2012, Section 5.

<sup>7</sup> *Idem*.

<sup>8</sup> *Id.*, Section 17 (b).

<sup>9</sup> The official webpages of ██████████ and of ██████████ do not state that ██████████ studied in UP. Even ██████████'s Wikipedia page expressly states that she **did not** graduate from the UP ██████████.

claim regarding █████ education in UP, it is not the University's obligation to investigate what it is just to fill the gaps of an unspecified verification request.

It is suggested that after the identity and authority of the journalist has been confirmed, the University should ask the journalist to (1) specify the "public profile" referred to; and more importantly, (2) indicate the *specific* information contained sought to be verified. The University's reply should be neutrally-worded and well-explained to not give the impression that the University is inclined to one side or the other.

After the requester has indicated the specific information sought to be verified, then the UP Diliman may refer the specific information sought to be verified to its FOI Receiving Officer<sup>10</sup> and FOI Decision Maker.<sup>11</sup>

For the second purpose of the request, it is not a legitimate purpose. To simply "get additional information" without an underlying rationale is merely **fishing for information**. There can be legitimate purposes related to this such as conducting a comparative study of the educational attainment of senatorial candidates or fact-checking *specific* statements. However, to request for information for the reason of getting "additional information" is not a legitimate purpose. Its logic is even tautological reasoning. It is suggested that the University denies this request for lack of an underlying legitimate purpose.

### ***Evaluation of FOI Decision Maker and Data Protection Officer***

The UP Diliman FOI Receiving Officer has to be informed to conduct the proper procedure<sup>12</sup> for information requests as well as payment of necessary fees.<sup>13</sup> The UP Diliman FOI Decision Maker has to be allowed to conduct the necessary determination<sup>14</sup> in accordance with the FOI Executive Order and the UP Diliman FOI Manual, if already existing.

It is suggested that the requester is not anymore informed of the referral to UP Diliman's FOI officers as the requester may invoke the fifteen (15)-day period to reply to FOI requests.<sup>15</sup>

After the journalist has identified the specific items of information sought to be verified, UP Diliman's FOI Decision Maker and Data Protection Officer have to mutually evaluate which items of information are minimally necessary for the journalist's *specific*<sup>16</sup> and *legitimate*<sup>17</sup> purpose. Only these minimally necessary items may be released by the University.

### ***Concern that the information requested are "sensitive personal information"***

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<sup>10</sup> Executive Order No. 2, s. 2016, Section 8(b).

<sup>11</sup> *Idem*, Section 9(d).

<sup>12</sup> Executive Order No. 2, s. 2016, Section 9.

<sup>13</sup> *Idem*, Section 10.

<sup>14</sup> *Id.*, Section 6.

<sup>15</sup> *Id.*, Section 9(d).

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

<sup>17</sup> *Idem*, Section 17(b).

The requested information are *educational information* which is classified as **sensitive personal information**<sup>18</sup> by the Data Privacy Act. Sensitive personal information may not be disclosed save for the six (6) exceptions under the law.<sup>19</sup>

However, since the Data Privacy Act “does not apply”<sup>20</sup> to personal information processed for journalistic purposes, then the provisions on of the Data Privacy Act are not applicable – including the provisions on sensitive personal application.

**██████████ has a right to be informed that her educational information shall be disclosed after the University receives the specifics requested from the journalist**

Although the Data Privacy Act does not apply to personal information processed for journalistic purposes, its Implementing Rules and Regulations still requires information controllers and processors to “uphold the rights of data subjects”.<sup>21</sup> One of these rights is the “right to be informed whether personal data pertaining to him or her *shall be*, are being, or have been processed”.<sup>22</sup> It is suggested that a letter be sent to ██████████ notifying her that her information shall be disclosed for journalistic purposes only after (1) the journalist provided the specific items of information sought to be verified; (2) UP Diliman’s FOI Decision Maker and Data Protection Officer have cleared for release the specific items of information.

Upon being informed, it is possible that ██████████ exercise her right to object<sup>23</sup> to the processing of her personal information. If this becomes the case, the University should submit to the National Privacy Commission’s decision the contending interests of ██████████ and ██████████.

***Disclose minimally necessary information with data privacy reminders***

The University may disclose information because the Data Privacy Act “does not apply”<sup>24</sup> to personal information processed for journalistic purposes. However, this exemption applies “only to the minimum extent necessary to achieve the specific purpose, function, or activity”<sup>25</sup> of the journalist. The University may only release specific items of information mutually allowed by UP Diliman’s FOI Decision Maker and Data Protection Officer.

Responsibilities under the Data Privacy Act does not end with the release of information. Along with the disclosure of information, the University should remind the journalist to:

<sup>18</sup> Data Privacy Act of 2012, Section 3(l).

<sup>19</sup> *Idem*, Section 13.

<sup>20</sup> *Id.*, Section 4.

<sup>21</sup> Implementing Rules and Regulations of the Data Privacy Act of 2012, Section 6(a).

<sup>22</sup> *Idem*, Section 34(a)(1).

<sup>23</sup> *Id.*, Section 34(b).

<sup>24</sup> *Supra*, 21.

<sup>25</sup> *Supra*,

- (1) Only use the information strictly in accordance with the journalistic purpose communicated to the University;<sup>26</sup>
- (2) Continue to respect ██████ rights as a data subject;<sup>27</sup> and
- (3) Implement security measures for personal data protection.<sup>28</sup>

### **Conclusion**

The journalist should first identify the specific items of information sought to be verified so that the University may disclose only information minimally necessary for the journalistic purpose. UP Diliman's FOI Decision Maker and Data Protection Officer should mutually evaluate which specific items of information may be released. After specific items of information for disclosure have been cleared for release, provide ██████ her "right to be informed" by notifying her of the specific items of information to be disclosed for journalistic purposes. Along with the release of information to the journalist should come reminders to continue protecting the data privacy of ██████.

Please do not hesitate to reach out for clarifications or additional concerns.

Yours,

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

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<sup>26</sup> Data Privacy Act of 2012, Section 4.

<sup>27</sup> Implementing Rules and Regulations of the Data Privacy Act of 2012, Section 6(a).

<sup>28</sup> *Idem*, Section 5.