



11 February 2019

ADVISORY OPINION

Reference No. DPO 19-05

FOR : [REDACTED]

SUBJECT : **Requested Information for Project**

Dear [REDACTED]:

We respond to your request for guidance on the personal information requested by the [REDACTED] for its research entitled [REDACTED]. This research is endorsed by the Commission on Higher Education (CHED).

The following information of freshmen and graduating students are requested: ¹

- Student number
- Birthdate
- Gender
- Program

OPINION

UP Diliman *may provide* a list of its undergraduate degree programs to [REDACTED].

Before disclosing personal data of students, it is suggested that UP Diliman clarifies with [REDACTED] the significance of **birthdate** and **gender** in its research. If [REDACTED] provides an explanation that proves that birthdate and gender are *minimally necessary* for the *public benefit* of the research, then UP Diliman *may disclose* these along with the **student numbers** and **undergraduate degrees** of freshmen and graduating students.

¹ **Birthdate** and **gender** are classified as personal information. **Student numbers** of students of the University of the Philippines are classified as *sensitive* personal information because UP is a government institution. **Degree programs** are also *sensitive* personal information for being educational information. However, these classifications do not come into play because minimally necessary information for research purposes are *exempt* from the Data Privacy Act's prohibitions against disclosure.

Discussion

I. Effect of processing of information by a private institution

It should be noted that while CHED endorsed the research, it is ██████████ – a *private* Higher Education Institution – which is the *Personal Information Controller*.² CHED's exemption to the processing of information to carry out its functions as a public authority³ does not extend to ██████████.

Although ██████████ is a private institution, UP Diliman *may provide* a list of its undergraduate degree programs because these are public non-personal information.⁴

II. Minimally necessary information for research purposes are exempt from the Data Privacy Act's prohibitions against disclosure

The Data Privacy Act does not apply to personal information processed for research purposes⁵ if the following requirements are met:

First, the research is “intended for a public benefit”;⁶ and

Second, the information is processed “only to the minimum extent necessary to achieve the specific purpose”⁷ of the research.

First requirement: Public benefit

As the research is endorsed by CHED, the presumption⁸ is that the research is for a public benefit.

Second requirement: Process minimally necessary information

² Republic Act No. 10173, Data Privacy Act of 2012, Section 3(h).

³ *Idem*, Section 4(e).

⁴ The **scope** of the Data Privacy Act of 2012 only applies to the processing of personal information on **individuals**.

⁵ Data Privacy Act of 2012, Section 4(d).

⁶ Implementing Rules and Regulations of the Data Privacy Act of 2012, Section 5(c).

⁷ *Idem*, Section 5, last paragraph.

⁸ Presumption of regularity in the performance of official duties of CHED, see *Yap v. Lagtapon* (G.R. No. 196347, January 23, 2017).

The **student number** is minimally necessary to the research because an “online survey of students” will be conducted. [REDACTED], the researcher, needs to identify which students are graduating and which are not.

The **undergraduate program** is minimally necessary to the research because the purpose of the research is to determine the connection of learning to employability.

However, it is not clear to UP Diliman whether **birthdate** and **gender** are minimally necessary for the public welfare of [REDACTED]'s research.

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.⁹

Similarly, although [REDACTED]'s research has a public benefit, UP Diliman is not aware of the part of birthdate and gender in the research purpose.

Suggested course of action

UP Diliman *may provide* a list of its undergraduate degree programs to [REDACTED].

Before disclosing personal data of students, it is suggested that UP Diliman clarifies with [REDACTED] the significance of birthdate and gender in its research. If [REDACTED] will provide an explanation that proves that birthdate and gender are *minimally necessary* for the *public benefit* of the research, then UP Diliman *may disclose* these along with the student numbers and undergraduate degrees of freshmen and graduating students.

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

Yours,

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

⁹ National Privacy Commission Privacy Policy Office Advisory Opinion No. 2017-56, 20 September 2017.