



04 April 2019

ADVISORY OPINION

Reference No. DPO 19-15A

FOR : ██████████

SUBJECT : **Interplay of Freedom of Information Executive Order
and the Data Privacy Act**

Dear ██████████:

We provide our opinion on how to simultaneously apply the Freedom of Information Executive Order and the Data Privacy Act in requests for information and records of UP Diliman as a government institution.

Facts

- The Data Privacy Act of 2012,¹ its implementing rules, and various issuances of the National Privacy Commission (NPC) protects individuals from unauthorized and unnecessary processing of personal data.²
- The Freedom of Information (FOI) Executive Order (EO)³ operationalizes the constitutional right to information and state policy of transparency in public service.
- Some requests for information under the FOI EO ostensibly conflicts with data privacy prohibitions against processing of personal information.

Issue

How can the FOI EO and the Data Privacy Act be simultaneously enforced?

¹ Republic Act No. 10173.

² Data Privacy Act of 2012, Sections 11-19.

³ Executive Order No. 2, series of 2016.

ADVISORY OPINION

The Freedom of Information Executive Order and the Data Privacy Act should not be simultaneously applied to requests for information. The following methodical classification is suggested in evaluating whether information can be disclosed or not:

General Rule:

Information may be disclosed within the framework of the FOI EO.

Exception:

Personal data should not be included among the information to be disclosed.

Exception to the Exception:

Certain information on government employees may be disclosed.

Discussion

Framework

FOI EO and the Data Privacy Act may be viewed to be at odds with each other. It may be argued that an item of information should be disclosed by virtue of the FOI EO while it may also be claimed that this information is protected by the Data Privacy Act against unauthorized disclosures. The ostensible conflict arises when there is an FOI request involving personal information,⁴ sensitive personal information,⁵ or privileged information⁶ (collectively, “personal data”⁷).

It should be noted however that in the interplay of principles, FOI is the active regulation and the Data Privacy Act is the reactive regulation.

For requests of information, the FOI EO and the Data Privacy Act should not be simultaneously applied as this may induce confusion. Among the FOI EO and Data Privacy Act, one should initially lay down the framework of the request and the other should carve out exceptions.

⁴ Personal information are those which can be used to directly or reasonably ascertain the identity of an individual. The legal definition of personal information is in Section 3(g) of the Data Privacy Act.

⁵ Sensitive personal information are generally those which can be used to damage or discriminate against individuals. The legal definition of personal information is in Section 3(l) of the Data Privacy Act.

⁶ Privileged information are those communicated or disclosed under certain relationships specified by the Rules of Court. The definition of privileged information in the context of data privacy is in Section 3(k) of the Data Privacy Act.

⁷ “Personal data” is the collective term for personal information, sensitive personal information and privileged information under Section 3(j) of the Implementing Rules and Regulations of the Data Privacy Act.

General Rule:

Information may be disclosed within the framework of the FOI EO

Since the government's operative schema for information requests is the FOI EO,⁸ we should first situate the request within the framework of the FOI EO before data privacy restrictions are applied. Working within the FOI EO, information, official records, public records and documents pertaining to official acts, transactions or decisions⁹ can generally be disclosed.

Exception:

Personal data should not be included among the information to be disclosed

In case the requested information contains personal data, then commonly, the personal data should not be disclosed to "afford full protection to the right to privacy of the individual".¹⁰ The "Inventory of Exceptions to Executive Order No. 2"¹¹ expressly excludes from the FOI EO "Information deemed confidential for the protection of the privacy of persons".¹²

Exception to the Exception:

Certain information on government employees may be disclosed

Despite data privacy regulations, not all personal data are undisclosable. Regulations allow disclosure in select instances:

1. Under the Data Privacy Act, the following information of government officers and employees may be disclosed:
 - The fact that the individual is or was an officer or employee of the government institution;
 - The title, business address and office telephone number of the individual;
 - The classification, salary range and responsibilities of the position held by the individual; and
 - The name of the individual on a document prepared by the individual in the course of employment with the government.
2. Under the "Inventory of Exceptions to Executive Order No. 2", personal information may be disclosed if the disclosure:
 - is a matter of public concern or interest; *and*
 - shall not meddle with or disturb the private life or family relations of the individual; *and*

⁸ Freedom of Information Executive Order, Section 2.

⁹ *Idem*, Section 3.

¹⁰ *Id.*, Section 7.

¹¹ Memorandum from the Executive Secretary, 24 November 2016.

¹² Inventory of Exceptions to Executive Order No. 2, Exception No. 4.

- is not prohibited by any law or regulation.

Unfortunately, item #2 above is self-defeating. The requirement that the disclosure of personal data is “*not prohibited by any law or regulation*” reinstates the applicability of the Data Privacy Act – making this “exception to the exception” ineffectual. In any case, the “Inventory of Exceptions to Executive Order No. 2” cannot contradict the Data Privacy Act. Executive acts are invalid if they contravene laws.

Hence, the only “exception to the exception” is item #1: certain information on government employees may be disclosed.

Further Reading

For further information, the following are specific provisions that address **Data Privacy in the context of Freedom of Information**:

- Executive Order No. 2, series of 2016, Section 7 on *protection of privacy*;
- Freedom of Information Manual of the University of the Philippines, Section 6(2)(g) for *requested information that may be in violation of Data Privacy Act or other laws*;
- University of the Philippines Privacy Notice for Filipino Citizens Requesting Access to Information on Matters of Public Concern on *Personal Information Collected From Requesting Parties*;
- Freedom of Information Manual of the National Privacy Commission, Section 7 on *protection of privacy*;
- Inventory of Exceptions to Executive Order No. 2, Section 4 (a) on *information deemed confidential for the protection of the privacy of persons*;
- National Privacy Commission’s Position Paper on Freedom of Information on *government officials who abuse their position or takes undue advantage of their functions for personal benefit* and on the NPC’s position that *protection of privacy is not intended to shield government officials*.

Please feel free to reach out for further concerns.

Yours,

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