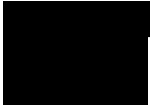




20 May 2019

ADVISORY OPINION

Reference No. DPO 19-21

FOR : 

SUBJECT : **Inquiry on Memorandum No. TJH-2019-10**

Dear Mr. :

We address your following inquiries:

1. Is the Non-Disclosure Undertaking (NDU) required from all employees by Memorandum No. TJH 2019-10 a necessity?
2. Does the Memorandum have overlaps in the UP Diliman Data Protection Team's functions?

Necessity of the Memorandum

We do not find the Memorandum necessary for the following reasons:

1. The Privacy Information Controller required to comply with data protection measures are our Constituent Universities as separate juridical entities - not our employees in their personal capacities. The NDU seems to shift the burden of keeping information private to our employees.
2. The NDU is a heavy reproduction of the Data Privacy Act. Like any other law, it is automatic that all UP employees comply with the Data Privacy Act. It is not necessary for employees to sign an undertaking for them to follow the requirements of a law. Having the NDU would set an undesirable precedent because the question is now begged: if UP required its employees to sign an undertaking to follow data privacy measures, why is UP not requiring its employees to sign measures related to other laws such as money laundering, taxation, graft and corruption, etc.?
3. The NDU burdens all employees of making the decision on **how** to process information (e.g. employee should only process information when certain criteria are present). This is a management decision which not all UP employees may be equipped to conduct. Also, the NDU overlooked to consult UP offices before

assigning to all UP employees the **additional function** of determining - for each piece of information received - whether the particular circumstances at the moment **legally** justify the processing of personal information.

4. The NDU may have a chilling effect against employees because "criminal penalties" is mentioned - giving the impression that an employee - not the Constituent University - will be the party primarily liable in case the Data Privacy Act is violated. We purposely called our "Compliance Officers for Privacy" as "Privacy Focal Persons" to remove the notion that UP Diliman is curtailing the freedoms of its people by stringently policing them. However, the chilling effect of the NDU may negate this.

Overlap with the functions of the UP Diliman Data Protection Team

It is our view that the Memorandum overlaps with the jurisdiction of UP Diliman Office of the Chancellor. The UP Diliman Data Protection Officer (DPO) directly and exclusively reports to the UP Diliman Chancellor. Constituent Universities (CUs) are autonomous and have their own Data Protection Officers who are not a mere Compliance Officers for Privacy of the UP System - they are independent officers for their respective CUs.

Under the UP Diliman [Data Protection Officer Roles and Responsibilities](#), "The UP Diliman DPO shall have jurisdiction and authority on all matters related to the data privacy and protection of related to UP Diliman"; it further states:

"V. Autonomy and Independence

The UP Diliman DPO reports directly and exclusively to the UP Diliman Chancellor. In the fulfillment of its roles and responsibilities, the UP Diliman DPO may collaborate with or seek assistance from UP Diliman units and offices. As an autonomous constituent university, UP Diliman and its DPO shall exercise the autonomy and independence mandated by NPC Advisory No.2017-01 The UP Diliman DPO may coordinate with data protection officers of other Constituent Universities (CU) for inter-CU endeavors."

Only one (1) DPO is registered with the National Privacy Commission for each CU. Every autonomous CU is a separate Personal Information Controller (PIC) apart from the UP System because each CU controls a separate set of personal information. The intent of the National Privacy Commission is to have each Data Protection Officer to have ultimate liability over the data protection of his/her PIC. At the very least, it may have been best that the DPO of all eight (8) CUs were consulted prior to the Memorandum as it is still the CU DPOs who will be liable in case the UP System commits an oversight in data privacy issuances.

We acknowledge that the UP [REDACTED] is a leading legal luminary in the country. We appreciate that you wish to coordinate your concern with us. We will await the completion of your study of Memorandum No. TJH 2019-10. If after your study you have concerns that wish to address, then please feel free to inform us.

Best regards,

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