



30 July 2019

ADVISORY OPINION

Reference No. DPO 19-35

FOR : ██████████

SUBJECT : **Disclosure of General Information of Administrative Cases**

Dear ██████████:

We respectfully provide guidance on your considered plan of action to publicize disciplinary cases with data privacy safeguards.

Facts

- UP Diliman annually handles dozens of disciplinary cases annually but details of cases are not publicized.
- Lack of publication has adverse outcomes: (1) some are misled that justice is not meted out; and (2) the deterrent effect of disciplinary cases seems to be zero.
- The possibility of posting case details is being considered – from the time they are filed to decisions and appeals, if any. The postings would give the status of each case (preliminary hearing, formal charge filed, hearings ongoing, decision rendered by the office, appeal filed with ██████████, decision of ██████████, appeal filed with ██████████, decision of President, appeal filed with ██████████, decision of ██████████).
- Status postings could also function to alert people who might want to testify or have additional information to help with the case.
- Upon research, the ██████████ found the approach of the ██████████ a viable paradigm to explore: posting case descriptions without names but with extensive details.

Issue

- Is it feasible to post cases with the ██████████ and the ██████████ on the Internet, giving broad details of the case (up to the college and organizations involved, where appropriate) but not giving the parties' names?

Advisory Opinion

Yes, general background information and updates on cases may be disclosed to the UP Diliman community as long as we manage privacy prohibitions and we manage the parties involved.

Privacy prohibitions can be managed by:

- (1) Working outside the scope of the Data Privacy Act by not involving personal information in posts; and
- (2) Not violating privacy principles of transparency, legitimate purpose and proportionality.

The parties involved and the public can be managed by:

- (1) Providing compelling purposes for posting case backgrounds and updates;
- (2) Not disclosing personal information;
- (3) Assuring parties that the pieces of information in posts by themselves cannot be stitched together to ascertain the identity of a person involved; and
- (4) Restricting access to posts to members of the UP Diliman community.

The investigation announcements of ██████████ are useful baselines to learn how to frame postings with minimal disclosure. Our objectives will still be served even if our descriptions are broader than the level of detail revealed by ██████████.

Discussion

First Objective: **Manage Data Privacy Prohibitions**

Two-pronged solution: work outside the scope of the Data Privacy Act and not violate privacy principles

It is suggested to nip data privacy issues at the bud. Instead of navigating compliance with the disclosure requirements of the Data Privacy Act, it is advisable that we break free from the scope¹ of the law altogether. This can be done by (1) not disclosing any personal information in posts; and (2) not including details that can be used by the general public to ascertain the identity of the parties and their witnesses. As an additional layer of security, we

¹Data Privacy Act of 2012. Section 4. *Scope*. – This Act applies to the processing of all types of personal information and to any natural and juridical person involved in personal information processing...

should ensure that privacy principles of transparency, legitimate purpose and proportionality² are observed.

Working outside the Data Privacy Act

The Data Privacy Act regulates all types of processing of personal information.³ As long as no personal information is involved in posting of cases⁴ and no identity can be directly ascertained using the posts alone⁵, UP Diliman can position its case information postings to be beyond the scope of the Data Privacy Act. Equally important is that the privacy of those involved are genuinely respected.

To formally establish and frame the public's expectations that the Data Privacy Act is inapplicable, it is suggested that webpages contain the following notice:

“We respect the impact of cases to parties involved as well as the UP Diliman community. Backgrounds and updates of cases are posted for the following necessities: (1) administrative transparency; (2) openness on the state or our community; and (3) deterrence of future untoward incidents.

In appreciation of the delicate nature of cases, no personal information is disclosed. Precautions are taken to ensure that pieces information in posts by themselves will not enable the general public to identify a party or witness. This is to balance addressing the above necessities vis-à-vis respecting the parties involved.”

Exercising privacy principles

As added safeguard, we should still be able to demonstrate that there are no violations of privacy principles.⁶ The advantage of this is that even if there is a claim that a *particular* post contains personal information and hence is covered by the Data Privacy Act, we can prove that there is still no transgression.

Transparency⁷

All parties to a case should be informed that the general background and updates of their case will be posted online with all personally identifiable information left out. For the complainant, this can be done by having a short statement in one of the forms accomplished to file a complaint. For the defendant, this can be done by including this statement in the subpoena or any other initial communication provided.

² *Idem*, Section 11. *General Data Privacy Principles*. – The processing of personal information shall be allowed, subject to compliance with the requirements of this Act and other laws allowing disclosure of information to the public and adherence to the principles of transparency, legitimate purpose and proportionality.

³ By legal definition, personal information includes sensitive personal information as its subset.

⁴ Data Privacy Act of 2012, Section 12.

⁵ *Idem*, Section 3(g).

⁶ *Supra*, 2.

⁷ Implementing Rules of the Data Privacy Act of 2012, Section 18(a).

Legitimate Purpose⁸

We have not one but three legitimate purposes for posting case information. Our legitimate purposes are administrative transparency; openness on the state or our community; and deterrence of future untoward incidents. These are communicated to the public through the afore-quoted suggested notice in webpages. With respect to the parties themselves, care should be taken to lead them to understand the importance of our legitimate purposes. Correspondingly important is assuring the parties that their identities are confidential by having writers trained by the ██████████, ██████████, and the Data Protection Team (see discussion below).

Proportionality⁹

We should not disclose information more than what is minimally necessary to achieve our three legitimate purposes. It is suggested that those who will author writeups of cases undergo training with ██████████, ██████████ and the Data Protection Team.

For data protection, our team will be happy to provide training to those who will author posts to ensure that (1) minimal information is involved; (2) descriptions are framed to be about an incident and not about a person's fault; and (3) handling documents used as basis in drafting posts.

It is fortunate the ██████████ was able to find the investigation announcements of ██████████. These announcements are useful guides to learn how to frame postings to contain minimal information. Our legitimate purposes will be served even if we use descriptions which are broader than the level of detail implemented by ██████████. Rather than specifying the rank and position, one can be simply be referred to as faculty or staff of a named college or office. Rather than specifying the course, one can be referred to as a student of a named degree-granting unit. Writeups can be framed in such a way that *what are described are the actions of UP Diliman to address the issue* instead of focusing on details of what happened to the complainant or what was committed by the defendant.

Second Objective: **Manage Parties and their Witnesses**

Assuring the parties and their witnesses

The foreseeable prominent objection to posting of cases is the violation of the parties' privacy and the resulting damage to their reputation. This can be addressed by *assuring parties and their witnesses* that there are sound and compelling legitimate purposes for posting case information; no personal information will be disclosed; and the pieces of information in posts – by themselves – cannot be used to ascertain the identity of a person involved.

⁸ *Idem*, Section 18(b).

⁹ *Id.*, Section 18(c).

Data privacy training and continuing guidance to writers are key in ensuring that personal information are absent from postings.

It is possible that external parties who are already aware of the surrounding circumstances of a case will be able to deduce the identities of parties by reading the posts. In these cases, the *new* information made known to these third parties are minimal because it is their *prior* knowledge of surrounding circumstances which led them to deduce the identities of the parties. Since due process is observed for all parties at every stage of a case, these *new* information to external parties are simply fair and objective case information.

Communicating the sound purposes for posting case backgrounds and updates

We should be first to sympathize with privacy and reputational concerns on posting case information. We should take pains to explain to the parties and the UP Diliman community the necessity of posting by:

- (1) Discussing during initial hearing the importance of posting and the level of care to be exerted to keep identities confidential;
- (2) Including an explanatory statement in the initial documents used by the parties (complaint form for the complainant and subpoena for the defendant); and
- (3) Having a statement of purpose in all webpages that will display information of cases (see suggested notice in webpages above).

Restricting access to posts to members of the UP Diliman community

Beyond data privacy, those involved should also be assured of information security. Information security is safeguarding processing systems¹⁰ in the storage and transmission of information.

Since our objectives for this initiative are directed at the UP Diliman community, it may be prudent – if technically feasible – to limit access within our community through any of the following means:

- (1) The webpages may only be accessed through Dilnet; or
- (2) Logging on to a Dilnet account is required to view the pages.

Equally advantageous is that restricting access to members of our community will prohibit the public from scrutinizing the number and nature of violence and sexual harassment cases UP Diliman handles. In this day and age of internet bashing, it is prudent to manage public image in the internet.

Our team has reached out to the [REDACTED] to explore technical options. We will update your good office on the matter.

¹⁰ Implementing Rules and Responsibilities of the Data Privacy Act of 2012, Section 28. *Guidelines for Technical Security Measures.*

Conclusion

General background information and updates on cases may be disclosed to the UP Diliman community if we manage (1) privacy prohibitions; and (2) the parties, witnesses and the public. Privacy prohibitions are managed by working outside the scope of the data privacy act and ensuring that no privacy principle is violated. Parties, witnesses and the public are managed by providing and explaining our legitimate purposes; not disclosing personal information; assuring that pieces of information in posts cannot be stitched together to ascertain identities; and restricting posts to the UP Diliman community

Please feel free to reach out for further concerns.

Yours,

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