



03 July 2019

**ADVISORY OPINION**

Reference No. DPO 19-36

FOR : [REDACTED]

SUBJECT : Privacy Notice for [REDACTED] Research

Dear [REDACTED] and [REDACTED]:

We respond to your inquiry on what notice should be displayed with regard to your prospective [REDACTED] study.

**Facts**

- A DOST-funded research project aims to study the [REDACTED] of people, cars and possibly others.
- To this end, traffic cameras will be set up to capture images in an area inside the UP Diliman campus.

**Inquiry**

- What notice should be displayed?

**Advisory Opinion**

The Data Privacy Act exempts from its scope processing of information for purposes of research as long as the requirements of its Implementing Rules are complied with. The notice to be posted should be framed to exempt the study from the prohibitions of the Data Privacy Act of 2012.

The following public notice is suggested:

“From <start date> to <end date>, traffic flow in this area will be recorded by cameras for the purpose of research. Only aggregated data will be processed. Persons and vehicles will not be identified.”

## **Discussion**

### ***Exempting the research from data privacy prohibitions***

Data gathering and processing for research purposes is exempted from the scope of the Data Privacy Act.<sup>1</sup> However, this exemption applies only as long as what is processed are the minimum extent of data necessary to achieve the purpose of the research.<sup>2</sup> The National Privacy Commission lays out the following guidelines for research to be beyond the scope of the Data Privacy Act:<sup>3</sup>

“First, research purpose is strictly interpreted to refer to processing intended for a public benefit. Maintaining a registry for research purpose falls within the special cases recognized by the DPA.

Second, the processing will be exempted only to the extent necessary. Personal information controllers (PICs) and personal information processors (PIPs) engaged in research which involves sensitive personal information are expected to comply with their obligations under the DPA on the implementation of organizational, technical, and physical security measures to ensure the protection of personal data against accidental or unlawful destruction, alteration, disclosure, or unlawful processing. PICs are also responsible for personal information under its control or custody, including those transferred or shared with third parties.

Third, the flexibility for research purposes will only apply in so far as it is consistent with ethical and legal standards. This means that there are instances when the consent requirements for research may be waived if such waiver is consistent with legal and ethical principles. Likewise, the rights of data subjects may also be limited where such limitation is necessary to maintain research integrity.”

It is suggested that instead of navigating compliance with data privacy regulations, your research breaks free from prohibitions by simply working outside the scope of the Data Privacy Act. The most pertinent requirement in the above-quoted guidelines is that the research must be “intended for a public benefit.” Although DOST funding is an indicator of public interest, it is suggested that the public benefit of your research be explicitly stated in its abstract.

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<sup>1</sup> Republic Act No. 10175, Section 4(d).

<sup>2</sup> Implementing Rules and Regulations of the Data Privacy Act of 2012, Section 5, *last paragraph*.

<sup>3</sup> NPC Advisory Opinion No. 2018-54, 04 December 2018.

### **Data retention**

Since the project is a DOST-funded project, it may be advisable to retain data after the research has concluded. The general rule is that “Personal Data shall not be retained longer than necessary.”<sup>4</sup> However, you may retain data if it is aggregated.<sup>5</sup>

### **Public Notice**

Although research is exempted from the data privacy prohibitions, the data subjects (i.e. people being recorded) still do not lose their data privacy rights. Among these is the “right to be informed”<sup>6</sup> of the nature, purpose, and extent<sup>7</sup> of processing of their personal information. The following notice is suggested:

“From <start date> to <end date>, traffic flow in this area will be recorded by cameras for the purpose of research. Only aggregated data will be processed. Persons and vehicles will not be identified.”

Please note that you are in the best position to describe your research activities and hence you have the liberty to reword the above suggested notice. However, your phraseology should state the nature (*i.e.* camera recording), purpose (*i.e.* research), and extent (*i.e.* traffic flow only for a specific period without identification).

Since people and vehicles may pass a road from two directions, it is suggested that notices be placed facing both directions of covered roads. Also, notices should be positioned to give passersby *prior* notice of the recording. That is, they still have the opportunity to turn back and not be captured by cameras.

Please feel free to reach out for further concerns.

Yours,

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

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<sup>4</sup> Implementing Rules of the Data Privacy Act of 2012, Section 19(d).

<sup>5</sup> *Idem*, Section 19(e).

<sup>6</sup> *Id.*, Section 34(a).

<sup>7</sup> *Id.*, Section 18(a).