



18 September 2019

### **ADVISORY OPINION**

Reference No. DPO 19-41

FOR : ██████████  
██████████  
██████████  
██████████

SUBJECT : **Requested information to update the UP Alumni Database**

Dear ██████████:

We respond to your inquiry regarding the requested information of the University of the Philippines System ██████████ (UPS ██████████) regarding an individual to update, if necessary, the UP Alumni Database.

### **Facts**

- The UPS ██████████ maintains the Alumni Database of the entire University of the Philippines, safeguarding files and records from the Graduating Class of 1909 onwards.
- With the update and maintenance of the alumni database as part of the UP President's Strategic Plan 2017-2023, UPS ██████████'s goal is to ensure that our Alumni Database accurately reflects registrar records across all Constituent Universities.
- It is in this regard that UPS ██████████ seek the UP Diliman ██████████'s ██████████ assistance in verifying a possible UP alumnus who is not in UPS ██████████'s database.
- The UPS ██████████ does not need to see the entire academic record of alumni. UPS ██████████ only needs confirmation that the alumnus has in fact graduated or has earned at least sixty credit units from UP Diliman. If not, then we will leave its Alumni Database as is.
- The following are the information needed for the UP Alumni Database:
  - College
  - Degree
  - Year graduated
  - If not graduated, units earned
  - Date enrolled

## **Inquiry**

- Can [REDACTED] disclose the requested information to UPS [REDACTED]?

### **Advisory Opinion**

The fact that an individual is an alumnus or not and the information necessitated by the alumni database are **sensitive** personal information. The processing of sensitive personal information is prohibited save for limited exceptions in the law. Of the exception applicable to the matter at hand, the prior consent of the individual is still required to be obtained.

There is admittedly a disjoint between the legal requirement that prior consent should be obtained and the reality that obtaining consent is not always practicable.

If practicable, it is suggested that the consent of the individual be obtained. Otherwise, and if the UPS [REDACTED] can spare time, then it is suggested that it requests an opinion from the National Privacy Commission (NPC). But if time is of the essence, then [REDACTED] can provide the requested information to UPS [REDACTED] by relying on NPC Advisory Opinion No. 2019-001. In this opinion, the NPC did not expressly require consent for “records verification” of “education”. The risk of relying on the applicability of the said opinion without securing UP’s own opinion is that the NPC or the courts may not interpret UP’s situation to be similar to the one resolved in NPC Advisory Opinion No.2019-001.

The appropriate course of action depends on the urgency of UPS [REDACTED]’s need. The preferred action is to obtain the consent of the individual. If time can be spared, then it is suggested that UPS [REDACTED] request and opinion from the NPC. Otherwise, [REDACTED] can provide information to UPS [REDACTED] by relying on the abovementioned NPC opinion.

## **Discussion**

### ***The UP Privacy Notice for Alumni is inapplicable to the case at hand***

The University of the Philippines Privacy Notice for Alumni<sup>1</sup> notifies alumni how any why their personal information are collected and used. While this Notice is useful, it is unfortunately inapplicable to the case at hand for the following reasons:

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<sup>1</sup>The University of the Philippines Privacy Notice for Alumni can be accessed at

*First*, the Notice applies only to alumni. In case the individual whose graduation is sought to be verified is not an alumnus, then the contents of the Notice are inapplicable.

*Second*, even if the individual is an alumnus, all alumni who graduated prior to the issuance of the Notice are not governed by the Notice, unless they provide their consent thereto.

***If practicable, the prior consent of the individual should be obtained***

The fact that an individual is an alumnus or not of UP Diliman and the information required by UPS ██████████'s alumni database are educational information which are classified as **sensitive** personal information.<sup>2</sup> Unlike regular personal information, the general rule for sensitive personal information is that it **may not be processed** unless the situation falls under any of the limited exceptions under the law.<sup>3</sup> Of these exceptions, the following exception for public organizations is the one pertinent to UPS ██████████:

*“SEC.13.Sensitive Personal Information and Privileged Information.–The processing of sensitive personal information and privileged information shall be prohibited, except in the following cases:*

*xxx*

*(d)The processing is necessary to achieve the lawful and noncommercial objectives of public organizations and their associations: Provided, That such processing is only confined and related to the bonafide members of these organizations or their associations: Provided, further, That the sensitive personal information are not transferred to third parties: Provided, finally, That consent of the data subject was obtained prior to processing;*

*[Emphasis Supplied]*

The University of the Philippines is a public organization and UPS ██████████ is one of its associations. UPS ██████████ complies with the following requirements of the above-quoted provision:

1. The requested information is necessary to achieve UPS ██████████'s “lawful and noncommercial objectives”;
2. The processing of information (i.e. requesting information from ██████████ and updating the alumni database) “is only confined and related to the bonafide members” of UPS ██████████; and
3. The educational information of alumni “are not transferred to third parties”.

However, the prior consent of the individual has not yet been obtained. Since educational information is sensitive personal information, it is suggested that the UPS ██████████ obtains the consent of the concerned individual to verify with the ██████████ whether or not

<sup>2</sup> Data Privacy Act of 2012, Section 3(l)(2).

<sup>3</sup> *Idem*, Section 13.

he/she is an alumnus of UP Diliman and if yes, consent for UPS ██████████ to obtain basic educational information from ██████████.

***In case obtaining consent is not practicable, then UPS ██████████ can either request for an NPC Advisory Opinion or rely on a precedent opinion***

Admittedly, there is a disjoint between the legal requirement that prior consent should be obtained and the reality that obtaining consent is not always practicable. In case UPS ██████████ can afford to spare time, then it is suggested that it requests for the opinion of the National Privacy Commission (NPC). In a number of cases, the NPC has taken into consideration the practicability of obtaining consent.<sup>4,5,6</sup> Unfortunately, in these cases, the information involved is regular personal information and not *sensitive* personal information which is what UPS ██████████ is requesting.

If obtaining the consent of the concerned individual is not practicable and UPS ██████████ cannot spare time to wait an NPC opinion, then ██████████ can provide UPS ██████████'s requested information by relying on NPC Advisory Opinion No. 2019-001. In this opinion, the NPC did not expressly require that consent be obtained for “records verification on birth, marital status and education”.<sup>7</sup>

Similarly, UPS ██████████ is conducting a “records verification” on the “education” of the concerned individual. UPS ██████████ can draw parallels and obtain information from ██████████ based on the said NPC opinion.

However, the same NPC opinion provided “General guidelines to consider”:

“[The organization] may examine its activities through the framework below:

- 1) The type of personal data is involved, i.e. personal information and/or sensitive or privileged personal information;
- 2) The lawful basis to process such personal data given the situation, if any ([the organization] may look into Sections 12 (b) and (f) and/or 13(f) of the DPA);and
- 3) The means and methods used, taking into consideration proportionality and expectation of privacy.”

UPS ██████████'s activities are in line with NPC's framework above. Notably, the information requested has “proportionality” with respect to UPS ██████████'s purpose. If the individual is an alumnus, his/her “expectation” of privacy” is not breached if information is provided to the UPS ██████████ to update the alumni database. If the individual is not an alumnus, his/her “expectation

<sup>4</sup> NPC Advisory Opinion No. 2017-023, 21 June 2017.

<sup>5</sup> NPC Advisory Opinion No. 2017-42, 14 August 2017.

<sup>6</sup> NPC Advisory Opinion No. 2018-020, 18 April 2018.

<sup>7</sup> NPC Advisory Opinion No. 2019-001, 03 January 2019

of privacy” is also not breached if one UP office informs another UP office the basic fact that he/she is not an alumnus.

The risk of relying on an NPC Advisory Opinion is that it is not certain if the NPC or the courts will view UP’s case to be similar to the situation tackled by the opinion relied upon. Hence, the advisability of UPS ██████████ requesting for its own NPC Advisory Opinion.

### **Conclusion**

The course of action depends on the urgency of UPS ██████████’s need. The preferred action is to obtain the consent of the individual. If time can be spared, then it is suggested that UPS ██████████ request and opinion from the NPC. Otherwise, ██████████ can provide information to UPS ██████████ by relying on NPC Advisory Opinion No.2019-001.

Please feel free to reach out for additional concerns.

Yours,

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