



16 November 2019

### **ADVISORY OPINION**

Reference No. DPO 19-54

FOR : [REDACTED]

CC: [REDACTED]

SUBJECT : **Misrepresentation on Graduation**

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Dear [REDACTED]:

We respond to your request for guidance on addressing the reports on individuals falsely claiming that they are graduates of the [REDACTED].

### **Facts**

- The [REDACTED] has been receiving reports that certain individuals misrepresent themselves as graduates of the programs of the College.
- There are instances wherein falsified diplomas or transcripts were used.

### **Inquiries**

- I. What is the appropriate response recommended by the DPO?
- II. Are these individuals our data subjects in the first place?
- III. May we declare publicly (or to the persons concerned) that these individuals are not graduates?
- IV. Does the University have a legitimate interest in confronting these claims?

## Discussion

### ***I. What is the appropriate response recommended by the DPO?***

The appropriate response should be proportionate to the purpose of the College.

The *formulation* and *execution* of any response should be preceded with the clear identification of the ██████████'s legitimate interest. Ostensibly, the primary interests of the UP Diliman and the College are to:

*First Interest:* Safeguard its goodwill and reputation by disassociating itself with the dishonest individuals and their actions; and

*Second Interest:* Prevent the public from being defrauded or from acting/deciding based on false qualifications of the concerned individuals.

It may be best that UP Diliman and the College focus on the second interest since express statements on the first interest may be perceived as a conceited concern.

Any response which would name these individuals entails processing<sup>1</sup> of their personal information<sup>2</sup> and hence would require the application of the data privacy principles of transparency, legitimate purpose, and proportionality.<sup>3</sup>

Transparency – Any appropriate response should make the individual involved aware of the nature, purpose and extent<sup>4</sup> why the College is making such response. This is relatively straightforward and would naturally become apparent in communications to the concerned individuals and/or the public.

Legitimate Purpose – The amount of data processing of the College to address the misrepresentations must pass the purpose, balancing and necessity tests which concisely are:

- Purpose test: are you pursuing a legitimate interest?
- Necessity test: is the processing necessary for that purpose?
- Balancing test: do the individual's interests override the legitimate interest?<sup>5</sup>

The discussion below will apply these tests will be applied to the suggested appropriate responses herein.

Proportionality – The data to be processed in any response are the names of the individuals and hence are not excessive<sup>6</sup> to the College's purpose. The fact that they are *not* graduates

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<sup>1</sup> Data Privacy Act of 2012, Section 3(j). *Processing* refers to any operation or any set of operations performed upon personal information including, but not limited to, the collection, recording, organization, storage, updating or modification, retrieval, consultation, use, consolidation, blocking, erasure or destruction of data.

<sup>2</sup> *Idem*, Section 3(g). *Personal information* refers to any information whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual.

<sup>3</sup> Implementing Rules and Regulations of the Data Privacy Act of 2012, Section 17.

<sup>4</sup> Implementing Rules and Regulations of the Data Privacy Act of 2012, Section 18(a).

<sup>5</sup> National Privacy Commission Advisory Opinion No. 201-020.

<sup>6</sup> Data Privacy Act of 2012, Section 18(c).

of the [REDACTED] are not even personally and legitimately identifiable to them because they even claim the opposite of such fact.

**The suggested responses are:**

*First*, the College should **conduct a documented investigation** to determine if these individuals indeed are claiming to be graduates of the College. In particular, reports received in person and social media posts should be verified. The College may be exposed to legal and reputational risks if the College disowns an individual who in the first place never claimed to be a graduate. It may be the case that there is a widespread rumor that an individual graduated from the College but he/she never made any personal or explicit claim.

*Second*, for individuals that we have documentary or testimonial evidence that they indeed misrepresented, the College may send them a **demand to cease and desist** their misrepresentations. Depending on the College's objectives, this demand may include claims for damages and/or public apologies.

*Third*, the College may issue a **notice to the public** that these individuals are not graduates of the College. The acceptability of this suggestion under data privacy regulations is discussed hereafter.

The suggested responses of sending a cease and desist demand and issuing a notice to the public both pass the purpose, necessity and balancing tests introduced above.

Purpose Test – The College's interests – safeguarding the College's goodwill and reputation and preventing the public from being defrauded or acting/deciding based on false qualifications of the concerned individuals – are legitimate interests to *protect* the College as well as the public.

Necessity Test – Sending demands to the individuals and a notice to the public are necessary because *communicating* to the concerned individuals and the the public are the way to achieve the legitimate interests of the college.

Balancing Test – The concerned individuals interests in deceiving others are *malicious* and hence in no way override the College's interest.

**II. Are these individuals our data subjects in the first place?**

No, the Individuals are *not* data subjects of UP Diliman.

UP Diliman has not collected, used, stored, transferred or disposed of the data of these individuals. Hence, they are not data subjects of UP Diliman. In the course of making appropriate responses for these individuals, they will become UP Diliman's data subjects for limited purpose of communicating to them and the public. Hence, it is suggested that the legitimate interest of the College be clearly established and communicated through use of a clear and explicit statement, discussed hereafter.

**III. May we declare publicly (or to the persons concerned) that these individuals are not graduates?**

Yes, the College may declare to the individuals concerned and publicly that they are not graduates of the [REDACTED].

As discussed, it is within the legitimate interest of UP Diliman send a cease and desist demand to individuals verified to be claiming themselves that they are graduates of the College.

It is also within the legitimate interest of UP Diliman to notify the public that an individual is not its alumnus. In an Advisory Opinion discussing a similar matter, the National Privacy Commission stated:

“It has been the common practice for companies to publish notices in newspapers and other media that a certain person appearing in the photograph used to be their employee, but is now no longer connected with the company, and a warning that transactions with the said person on behalf of the company will no longer be honored.

The above is still allowed under the DPA. The basis for processing may be Section 12(f) which provides for the processing that is necessary for the purposes of the legitimate interests pursued by the personal information controller or by a third party or parties to whom the data is disclosed, except where such interests are overridden by fundamental rights and freedoms of the data subject which require protection under the Philippine Constitution.”<sup>7</sup>

Hence, as long as the public notice is worded to pursue the legitimate interest of the College to disassociate from the individuals (and not worded to maliciously destroy the reputation of the individuals), then a notice may be set out through electronic or physical means.

**IV. Does the University have a legitimate interest in confronting these claims?**

Yes, UP Diliman and the College have legitimate interests in contradicting the false claims.

False pretenses may induce others to be defrauded. False qualifications may lead to usurpation of roles. As a vital college of the country’s National University,<sup>8</sup> it is a legitimate interest of the College to contradict false claims to prevent any deceit against the public. The purpose, balance and necessity tests discussed above are satisfied.

However, it is suggested that the College has a clear and explicit statement of its legitimate interest. This is to ensure what is being tested and to ensure that the privacy principle of transparency is observed. A suggested statement of legitimate interest is as follows:

“In the interest of preventing the public from being defrauded or from making actions based on false qualifications, the University of the Philippines Diliman

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<sup>7</sup> NPC Advisory Opinion No. 2019-024.

<sup>8</sup> Republic Act No. 9500, Section 2.

██████████ clarifies that the following individuals are not graduates of any of its programs:"

It is suggested that the above statement or a similar one be indicated in the cease and desist demand to the individuals as well as the public notice to be released by the College.

As stated, it is also the legitimate interest of UP Diliman and the College to safeguard their goodwill and reputation by disassociating from the dishonest individuals and their actions. However, communicating this interest to the public may be perceived as self-centered and it may be advisable to utilize more the interest of protecting the public.

Please feel free to reach out for clarifications or further concerns.

Yours,

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