

Discussion

On the onset, we note that beyond data privacy concerns, there are other factors that should be considered before we set the precedent of allowing any requests to view our records and set appointments with our people. These factors may include resource constraints, internal policies, operational procedures and management decision of offices concerned. It should also be considered if the documents requested contain *restricted information* under the UP Diliman Data Classification Policy which generally does not allow disclosure to external parties of internal, confidential, and sensitive confidential information.¹

Freedom of Information and the Data Privacy Act

The University of the Philippines Diliman recognizes the constitutional right of the people to information on matters of public concern. It likewise recognizes the obligation of public officers and employees to make its public documents accessible to the public, subject to reasonable laws and regulations.

Thus, The University of the Philippines adopted the University of the Philippines' Freedom of Information (FOI) Manual during its 1336th Board of Regents Meeting on 01 August 2018. The Manual serves as a guide for the University officials, faculty, staff, students, and the general public in the processing of any request for information under the Freedom of Information Executive Order (FOI EO).² It likewise provides the kinds of information that may and may not be publicly disclosed by the University.

There are instances when information may be disclosed pursuant to the FOI EO but at the same time, protected by the Data Privacy Act of 2012 (DPA of 2012). Thus, there is a need to harmonize these two statutes in order to determine whether a particular information can be disclosed. In doing this, the following guidelines may be observed:³

As a general rule, information **may** be disclosed provided it is **within the framework** of the FOI EO and University of the Philippines' FOI Manual.

As an exception, however, **personal data** contained within the said information **should not** be disclosed.

¹ UPD DPO Memorandum EBM 19-03.

² Executive Order No. 2, series of 2016, Operationalizing In The Executive Branch The People's Constitutional Right To Information And The State Policies To Full Public Disclosure And Transparency In The Public Service And Providing Guidelines Therefor, dated 23 July 2016

³ Data Protection Team Advisory Opinion Reference No. DPO 19-15A, dated 4 April 2019

As an exception to the exception, **certain information** on government employees as enumerated in the Data Privacy Act may be disclosed.

This means that it must first be established whether the information requested can be disclosed under the FOI EO and University's FOI Manual. If it falls under those that can be disclosed, the next step is to determine whether there are personal data contained therein. Should the information contain personal data,⁴ the said data cannot be disclosed in order to protect the data subject's right to privacy.⁵ However, if the personal data pertains to an officer or employee of the government in relation to his or her official functions,⁶ the same may be disclosed.

In this case, [REDACTED] is requesting to access faculty evaluation forms as well as policy documents pertaining thereto in order to understand how these work in an operational level.

In order to better address [REDACTED]'s concern, this Office opines that the matter is best coursed by the former through the University's FOI Receiving Officer, who shall then exercise the appropriate action over the same as prescribed in the University's FOI Manual.⁷

Since the requested information includes policy documents, there is a need to distinguish whether these can be disclosed or are covered by the deliberative process privilege, as explained in the case of *Department of Foreign Affairs vs. BCA International*.⁸

In the aforementioned case, it was stated therein that deliberative process privilege applies to "recommendations, advisory opinions, draft documents, proposals,

⁴ The term "personal data" refers to personal information, sensitive personal information, and privileged information, as defined under Section 3(j) of Republic Act No. 10173 or the Data Privacy Act of 2012.

⁵ Ibid.

⁶ Section 5, Rule II of the Implementing Rules and Regulations of the Data Privacy Act enumerates the instances when personal data of government officials and employees may be disclosed. To wit:

Section 5. *Special Cases*. The Act and these Rules shall not apply to the following specified information, only to the minimum extent of collection, access, use, disclosure or other processing necessary to the purpose, function, or activity concerned:

a. Information processed for purpose of allowing public access to

information that fall within matters of public concern, pertaining to:

1. Information about any individual who is or was an officer or employee of government that relates to his or her position or functions, including:

- (a) The fact that the individual is or was an officer or employee of the government;
- (b) The title, office address, and office telephone number of the individual;
- (c) The classification, salary range, and responsibilities of the position held by the individual; and
- (d) The name of the individual on a document he or she prepared in the course of his or her employment with the government.

⁷ Office of the Chancellor Administrative Order No. MLT 19-069, dated 20 March 2019, designates [REDACTED], Office of the Chancellor as the FOI Receiving Officer (FRO) for UP Diliman, effective 1 September 2018.

⁸ G.R. No. 210858, 29 June 2016

suggestions, and other subjective documents that reflect the personal opinions of the writer rather than the policy of the agency”⁹ These materials are deemed privileged because of their role in the decision and policy making processes of an institution.

On the other hand, policy statements and final opinions of an agency, having the force and effect of law or explains the actions taken by an institution may be disclosed.¹⁰

Under the University’s FOI Manual, it is the FOI Delegate or FOI Decision Maker, as the case may be, is in the best position to determine under which category the requested information falls under.¹¹

Application of Data Privacy to Research Purposes

The general rule is that the prohibitions of the Data Privacy Act of 2012 do not apply to research purposes.¹² However, the inapplicability of the law only extends “only to the minimum extent necessary to achieve the specific purpose, function, or activity”¹³ of the research. Hence, ██████████ should be able to identify the specific purpose of each document and appointment requested and the University should determine for each document (i) if the document/appointment is minimally necessary to achieve the research purpose provided by ██████████ for that document/appointment; and (ii) if the University has the resources to evaluate the relevance of each document for the purpose of its request, and if necessary, redact parts that are unnecessary for its purpose.

Conclusion

In order for the University to provide the documents and appointments requested, the following should be determined prior to setting a precedent of allowing requests for documents and appointments:

1. Which information may be disclosed under the FOI EO and the UP FOI Manual, as determined by either the FOI Delegate or the FOI Decision Maker;
2. Determine for each requested document and appointment if it is minimally necessary to achieve the research purpose for that document/appointment; and
3. Consider other factors such as resource constraints, internal policies, operational procedures and management decision of offices concerned

⁹ Akbayan vs. Aquino, citing *Sears vs. Roebuck* 421 U.S., at 150, 95 S.Ct. 1504, G.R. No. 170518, 16 July 2018

¹⁰ See Note 7

¹¹ Office of the Chancellor Administrative Order No. MLT 19-070, dated 20 March 2019, designates ██████████, ██████████, ██████████, as the FOI Decision Maker (FDM) for UP Diliman, effective 1 September 2018.

¹² Data Privacy Act of 2012, Section 4(d).

¹³ Implementing Rules and Regulations of the Data Privacy Act, Section 5, last paragraph.

(including restriction of documents under the UP Diliman Data Classification Policy).

We hope to have enlightened you on the matter. Please feel free to reach out for clarifications or further concerns.

Yours,

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