



23 June 2020

ADVISORY OPINION

Reference No. DPO 20-12

FOR : [REDACTED]

SUBJECT : **Obtaining student consent through online means**

Dear [REDACTED]:

We commend your concern to student safety and your resourcefulness to explore technological solutions for students to provide their consent. We address below your inquiry if checking of an online box can validly substitute for a wet-ink signature in obtaining consent.

Facts

- OC Memorandum No. PDLC 18-23 required students to consent to the University of the Philippines' Privacy Notice for Students.
- With the impact of coronavirus pandemic on students' health and safety in mind, the [REDACTED] is considering to obtain student consent online via checking of a box (and entering their password) that signifies agreement to the University's Terms and Conditions and Data Privacy Policies before generating their Form 5 and other enrollment related forms

Inquiry

- Can the consent of students be validly obtained via checking of an online box and entering their password?

Advisory Opinion

Yes, consent may be validly obtained through ticking of a checkbox and thereafter entering the password of the student.

Discussion

Requirements for consent to be valid

While there is no specific form to obtain consent, a valid gathering of consent has a number of requirements.

Section 3(b) of the Data Privacy Act of 2012¹ states:

“Consent of the data subject refers to any freely given, specific, informed indication of will, whereby the data subject agrees to the collection and processing of personal information about and/or relating to him or her. Consent shall be evidenced by written, electronic or recorded means. It may also be given on behalf of the data subject by an agent specifically authorized by the data subject to do so.”

Distilling the provision above, the requirements for obtaining valid consent are:

<u>Requirement</u>	<u>Status of UP’s Compliance</u>
“freely given”	Complied with.
“specific”	To be addressed in a subsequent Advisory Opinion.
“informed”	To be addressed in a subsequent Advisory Opinion.
“indication of will”	Expected to be complied with. Checking a checkbox is an affirmative act that shows indication on the students’ will.
“evidenced by written, electronic or recorded means”	Complied with either through a wet-ink (physical) signature or through electronic means.

¹ Republic Act No. 10173.

“Freely given”

The University complies with this requirement because students are not coerced to grant their consent. In the same manner, UP may not be forced to continue the enrollment process if the University cannot process the information of the student due to lack of consent.

“Specific” and “informed”

We have found room for improvement on these requirements. It is fortunate that as an autonomous Constituent University, UP Diliman may adjust and improve the consent form to address needs specific to our context. This is in line with the autonomy and independence of the UP Diliman Data Protection Officer in the performance of his functions.^{2 3}

We take this opportunity to provide additional support through a supplemental Advisory Opinion that we will tender in the coming days. The purpose of supplemental opinion that we will provide is to further aid your good office in the following:

- (1) Improving compliance with the requirements of specificity and keeping students informed;
- (2) Adjusting the consent form as sensitivity to the shift to online and blended learning;
- (3) Adopting the practice of other Higher Education Institutions of not requiring consent every semester; and
- (4) Other points of improvement in obtaining consent such as when a student becomes of legal age during the semester (and hence the consent of the parent or guardian is automatically made inapplicable).

“Indication of will” and “evidenced by written, electronic or recorded means”

The indication of a student’s will is not constrained to affixing a signature. The law does not require a specific form to indicate one’s will. Rather, what is required is that consent is “evidenced”.⁴

² National Privacy Commission Advisory No. 2017-01:

“The DPO or COP shall act independently in the performance of his or her functions, and shall enjoy sufficient degree of autonomy. For this purpose, he or she must not receive instructions from the PIC or PIP regarding the exercise of his or her tasks.”

³ Office of the Chancellor Memo No. 19-073. Roles and Responsibilities of the Data Protection Officer. Section V: Autonomy and Independence.

⁴ Data Privacy Act of 2012, Section 3 (b)

The indication of a person's will should be expressed through an "affirmative act". Hence, the students must be the ones to check or tick the checkboxes themselves instead of ■■■ having the boxes pre-ticked. The National Privacy Commission noted:⁵

"Consent should be given by a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement to the processing of personal data relating to him or her, such as by a written statement, including by electronic means, or an oral statement. This could include ticking a box when visiting an internet website, choosing technical settings for information society services or another statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of his or her personal data. Silence, pre-ticked boxes or inactivity should not therefore constitute consent."

It is therefore advised that the ■■■ ensures that checkboxes are not pre-ticked to enable students to conduct the "affirmative act" of indicating their will to consent.

It is also suggested that your esteemed office has sufficiently reliable I.T. infrastructures to ensure that the students' acts of ticking checkboxes are duly recorded, and such occurrence can be proven when needed. There should be technical and organizational safeguards in place to ensure that UP Diliman can produce the evidence to prove that a student indeed ticked a checkbox online at a certain point in time to express consent.

Guidance in safekeeping evidence of consent

■■■ may refer to the UP Diliman Information Security Policy (UPD DPO Memo No. EBM 20-09) for guidance on safeguarding electronic evidences of consent. For managing records in general, reference can be made to UP Diliman Records Management Policy (UPD DPO Memo No. EBM 20-07).

Please feel free to reach out for clarifications or further concerns. We shall provide our supplemental Advisory Opinion in the coming days.

Yours,

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

⁵ NPC Advisory Opinion No. 2017-053