



14 July 2020

## **ADVISORY OPINION**

Reference No. DPO 20-14

FOR : ██████████  
██████████

SUBJECT : **UP Diliman Student Registration Consent Form**

Dear ██████████:

As undertaken in DPO Advisory Opinion No. EBM 20-12 on Obtaining student consent through online means, we provide this supplemental advisory opinion.

It is opportune that the ██████████ is moving to online options to obtain consent because of the shift to online-based learning and other “new normal” activities. The UP Diliman Data Protection Office deems it is high time to take a second look at current consent form which inappropriately refers to a verbose UP Privacy Notice for Students instead of the form itself clearly informing the students what they are consenting to. It may be a disservice to our students to refer them to one of the longest student consent forms in the country (11 pages) as this violates the requirement of being easy to access and understand and using clear and plain language.<sup>1</sup>

In response to the current consent concerns of ██████████, ██████████, ██████████, and the ██████████, it is timely that we address the shortcomings of the current student consent form. It is our honor to present the attached **UP Diliman Student Registration Consent Form**. While it is our humble view that this new form is sufficient, we respectfully request if you have any comments thereto. Otherwise, we are confident that this new form sufficiently addresses the shortcomings of the current form as discussed below.

In Advisory Opinion Reference No. DPO 20-12, the UP Diliman DPO confirmed that a student’s consent may be obtained through online means, provided the following requisites are complied with:

- a. It is **freely given**;
- b. There is an **indication of will**;
- c. It is **evidenced through written, electronic, or recorded means**;

<sup>1</sup> NPC Advisory Opinion No. 2018-013, NPC Advisory Opinion No. 2018-031.

- d. It is **specific**; and
- e. It is **informed**.

For this Supplementary Advisory Opinion, the UP Diliman DPO shall elucidate on the latter two requirements (specific and informed). This Supplemental Advisory Opinion shall also cover matters on the timeliness, and participation of parents/guardians in giving consent.

### ***Specificity of Consent***

Under the Data Privacy Act, consent must, among others, be specific. This means that it should particularly pertain to the nature of personal information that will be processed by the PIC as well as the extent of the processing.

This requirement for specificity is in line with the data privacy principle of transparency wherein the data subjects<sup>2</sup> must be properly informed of the nature, extent, and purpose of the processing of their personal data. One of the ways that data subjects are provided with information on these is through consent forms.

The General Data Protection Regulation (GDPR) requires that forms and statements obtaining consent must **point out** the necessary acts pertaining to the processing of information,<sup>3</sup> and the purpose for each. While it may be impractical to enumerate *all* the acts of processing that may be applied to a student's personal information, it is opined that a brief enumeration can be provided instead of clumping them in a single term such as, "for academic purposes". For example:

*We collect your personal data for the following purposes:*

1. *Academic purposes such as:*
  - a. *Processing of grades for purposes of evaluation and deliberation;*
  - b. *Establishment and maintenance of school information systems (e.g., Computerized Registration System (CRS), University Virtual Learning Environment (UVLe), etc.)*
  - c. *Purposes which your particular academic unit may specify and declare to you in writing;*

This way, the data subject can be given a clearer picture, by way of example, on the details surrounding the collection and processing of their personal data.<sup>4</sup>

### ***Informed Consent***

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<sup>2</sup> The term "data subjects", under the Section 3(c) of the Data Privacy Act of 2012, refers to an individual whose personal information is processed.

<sup>3</sup> Recital No. 32 on the Conditions for Consent under the GDPR, <https://gdpr-info.eu/recitals/no-32/>

<sup>4</sup> The National Privacy Commission in its Advisory Opinion No. 2017-068, dated 22 November 2017 stated that, "an exhaustive listing of specific entities may not be necessary for as long as the data subject is sufficiently informed of the nature and extent of processing of his or her data x x x"

The Data Privacy Act defines the term “consent” as an **informed indication of will**.<sup>5</sup> This means that the data subject **knows or has been apprised and have understood** the nature and extent of the processing of his personal information.

The current consent form which is annexed and inserted in the student’s enrollment forms states:

*I have read the University of the Philippines’ Privacy Notice for students.*

*I understand that for the UP System to carry out its mandate under the 1987 Constitution, the UP Charter and other laws, that the University must necessarily process my personal and sensitive personal information.*

*Therefore I grant my consent to and recognize the authority of the University to process my personal and sensitive personal information pursuant to the abovementioned Privacy Notice and other applicable laws.*

A reading of the current consent form reveals that it cannot be considered as a consent form nor a consent statement. In the recent UP Diliman Data Protection Office Advisory,<sup>6</sup> these two were defined and differentiated:

#### *Consent Statement*

x x x x

***A consent statement is a section forming part of a broader document to obtain informed consent related to process personal information. It provides the necessary details in relation to the processing of one’s personal information, such as, but not limited to, what personal information is needed by the organization, why it is being collected, and how it will be used.***

#### *Consent Form*

***Unlike a consent statement which is part of a broader document, a consent form is a standalone document to obtain informed consent. This is the distinction between a consent form and a consent statement: on the one hand, a consent form is an independent document which usually has more information on how personal information will be processed; on the other hand, a consent statement is a part of a broader document which describes the processing of personal information and obtains consent for such processing.*** x x x x (emphasis supplied)

This means that consent *statements* are part of a *broader* document to obtain informed consent in relation to the processing of personal information and provides details on *what is being collected, why is it being collected, and how will the collected data be used*. A *consent form* on the other hand, is a *broader and more detailed* document to obtain consent.

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<sup>5</sup> Section 3(b), DPA of 2012

<sup>6</sup> DPO Advisory No. EBM 20-03, 27 May 2020

In this case, although the current consent form may be said to form part of a broader document (it is said to be annexed to the enrollment form), it is bereft of details regarding what information will be collected, and its manner and purpose of collection, and hence cannot be considered as a consent statement.

In the same vein, it cannot also be considered as a consent form because not only is it not a standalone document, but it does not have sufficient details surrounding the processing of information.

It must also be noted that the current consent form refers to a separate document, the UP Privacy Notice, a verbose, 11-page document, informing students what they are consenting to, that is supposedly posted in the area where students are required to fill up enrollment forms and in the University's website.

This presents a situation where the data subject cannot be afforded ample opportunity to actually go through the Notice and be properly apprised of its contents, and consequently, prevented from making an informed decision on whether or not they will consent to the processing of their personal data.

In order for consent to be informed, it cannot suffice to simply place a phrasing such as "I have read and understood the terms of this Consent Form", or if the consent merely makes a reference to a separate document explaining the nature and extent of processing, e.g., the Privacy Notice.

An informed consent is only considered as such when it can be shown that the data subject has fully understood the notice.<sup>7</sup> Therefore, there is a need to present the form in such a way that the data subject can be sufficiently informed of its contents and have a full grasp of the same.

### ***Frequency***

A data subject's consent must be obtained at appropriate intervals, especially when there is a need to **confirm existing consent** or **gain new consent**.

The NPC notes, however, that if consent is obtained *too frequently* the data subject may tend to overlook the purpose of the consent,<sup>8</sup> and just haphazardly signify its acceptance of the agreement. In this case, the element of informed indication of choice will then be lacking.

It is submitted that there be several instances where the data subject's consent will be obtained:

- i. During its first enrollment in UP Diliman, if he/she is a minor, this will be accomplished by the parent or legal guardian on their behalf;
- ii. During its first enrollment in UP Diliman *upon reaching the age of majority* – in this case, it will be the data subject himself who will be able to decide on whether consent will be given;

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<sup>7</sup> NPC Data Privacy tool Kit, 3<sup>rd</sup> ed.

<sup>8</sup> Ibid

- iii. In special circumstances such as when the student returns or re-enrolls after a significant period of time (e.g., after going on a leave of absence)
- iv. In case there is a need to gain new consent brought about by the changes in the University's policies on the processing of information

The Office deems it proper that the consent of an enrollee will be obtained on two separate occasions: first, during its first enrollment in UP Diliman *through his/her parent or legal guardian*, if at that time, the enrollee is still a minor; and second, during its first enrollment in UP Diliman upon reaching the age of majority. The reason for such distinction is that the age of a data subject is material in granting consent.

Parental authority and responsibility, as provided in the New Civil Code, refers to the right of parents over the person and property of their children who have not yet reached the age of majority (i.e., those who are below eighteen years of age).<sup>9</sup> This is terminated when the child reaches eighteen years of age.<sup>10</sup> Only then, in the eyes of the law that he or she is deemed to have the capacity to act,<sup>11</sup> and consequently, give consent.<sup>12</sup>

Applying this in the current situation, enrollees below eighteen (18) years of age still do not have the capacity to act, and thus, the act of giving consent must be done through their parent or legal guardian. However, upon reaching the age of majority, they themselves are already capable of giving their own consent to the processing of their personal data.

### ***Timeliness***

Ideally, consent to the processing of personal information must be obtained *prior* to the processing.<sup>13</sup> In addition, the purpose of the collection of data, which must also form part of the consent, must be declared before or as soon as reasonably practicable, after collection.

Since the current consent form simply makes a reference to the UP System Privacy Notice for Students, and the said Notice also mentions the processing of personal data that have been collected when the student applied for admissions through the UPCAT, it gives the impression that the current form still seeks for consent in relation to past processing activities.

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<sup>9</sup> ARTICLE 209. Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the caring for and rearing them for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being.

<sup>10</sup> ARTICLE 234. Emancipation takes place by the attainment of majority. Unless otherwise provided, majority commences at the age of eighteen years. (397a, 398a, 400a, 401a) (as amended by RA 6809)

x x x

ARTICLE 236. Emancipation shall terminate parental authority over the person and property of the child who shall then be qualified and responsible for all acts of civil life, save the exceptions established by existing laws in special cases.

<sup>11</sup> ARTICLE 37. Juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death. **Capacity to act, which is the power to do acts with legal effect,** is acquired and may be lost.

<sup>12</sup> Ibid.

<sup>13</sup> Section 19(a)(1), DPA of 2012 IRR

Therefore, it is opined to no longer include the processes surrounding the information collected during the time when the student applied for admissions through the UPCAT. This is based on the principle that consent must be time-bound to its declared, specified, and legitimate purpose<sup>14</sup>

### ***Participation of Parent/Legal Guardian***

The Implementing Rules and Regulations of the Data Privacy Act of 2012 require that the data subject must be properly identified in the consent form. Thus, it is necessary that it must be specified from whom the consent is being obtained.<sup>15</sup>

In order to comply with the requirement, it is necessary that it must be indicated *who* and *in what capacity* the data subject is giving the consent, i.e., whether the parents who are entering into the agreement on behalf of their minors, then the same must be indicated in the form.

In light of the need for the above, it is our privilege to present to you the attached UP Diliman Student Registration Consent Form.

We hope to have guided you on the matter. Should you have additional concerns, please feel free to reach out to our team.

Thank you.

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

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<sup>14</sup> Ibid

<sup>15</sup> See Note 3