



23 September 2020

Advisory Opinion

Reference No. DPO 20-17

FOR : [REDACTED]
[REDACTED]

CC : [REDACTED]

SUBJECT : **UP [REDACTED] 1920 E-Yearbook Privacy Notice and Consent Form**

Dear [REDACTED],

We write in relation to *UP [REDACTED]*'s request for assistance in drafting the appropriate privacy notice and consent form for your e-yearbook.

We understand the [REDACTED]'s desire to celebrate its graduates and provide them with a token commemorating their stay in the university despite the circumstances that we face today.

We appreciate *UP [REDACTED]*'s initiative to comply with the Data Privacy Act of 2012, including its decision to do away with publishing the e-yearbook through a third-party application, in line with the data privacy principle of proportionality.

The principle of proportionality requires that "the processing of information shall be adequate, relevant, suitable, necessary, and not excessive in relation to a declared and specified purpose. Personal data shall be processed only if the purpose of the processing could not reasonably be fulfilled by other means."¹

As previously discussed with your Associate Editor, the processing and disclosure of personal information, in this case the personal data of the graduates and those that will appear on the

¹ National Privacy Commission Advisory Opinion No. 2019-007, 4 January 2019

e-yearbook, must remain adequate, relevant, suitable, necessary, and not excessive to the main purpose of the publication. If the purpose of the publication of the e-yearbook may be achieved through other means, such as having it on a different, and more private platform, then such may be more advisable than having it accessible to everyone on the internet.

Thus, we commend UP ██████'s decision to distribute the e-yearbooks to the graduates through their e-mails, which is less intrusive and more suitable for the purpose.

Privacy Notice

A privacy notice is a statement made to a data subject describing how a particular organization collects and processes the former's personal information. It is specific to a particular endeavor, project, or activity of an organization.² A privacy policy on the other hand, is an internal statement to the members of an organization governing its handling practices of personal information.³ The former is directed to the data subjects, while the latter is directed to the members of an organization.

Thus, it was proper for UP ██████ to use a privacy notice instead of a privacy policy since it was explaining to its data subjects, the what's, why's, and how's, in relation to the processing of their personal information for specific activity, which was the production and distribution of the e-yearbook.

The following key points were reflected in the privacy notice:

Data Privacy Key Considerations	██████████'s Privacy Notice
1. Who are covered by the notice?	"██████████ will collect all names, photographs, write-ups, affiliations, and honors from the ██████████ graduating class of 2020 and use it solely for the production and distribution of an E-Yearbook version of ██████████."
2. Why is ██████████ processing their personal information?	"██████████ will collect all names, photographs, write-ups, affiliations, and honors x x x and use it solely for the production and distribution of an E-Yearbook version of ██████████."
3. What are the personal data processed?	"██████████ will collect all names, photographs, write-ups, affiliations, and honors x x x "
4. How does ██████████ process personal information and how long does it retain it?	I. E-Yearbook Production: <ol style="list-style-type: none"> a. ██████████ will save all information collected for ██████████ in the team's Google Drive during the production of the E-Yearbook. b. Only members of ██████████ tasked in editing, proofreading, and layouting of the E-Yearbook will be given access to

² University of the Philippines Diliman Data Protection Office Advisory No. EBM 20-03, 27 May 2020

³ *Id.*

	<p>our subscribers' information until the E-Yearbook is published and released to the subscribers.</p> <p>c. A day after the distribution, [REDACTED] shall delete all information submitted for the production of [REDACTED] from all storage devices used, which includes, but is not limited to, our team's Google Drive and respective hard drives.</p> <p>d. [REDACTED] will never grant other parties or institutions access to the information submitted by the subscribers.</p> <p>II. E-Yearbook Distribution:</p> <p>a. All [REDACTED] subscribers can access all the processed information in the form of the E-Yearbook file.</p> <p>b. [REDACTED] will distribute the E-Yearbook in a password-protected file format, with each copy of the E-Yearbook containing reference numbers unique to each subscriber, as well as identifying features, to keep track of which E-Yearbook copy is released to which subscribers in case of unauthorized distribution of the files.</p> <p>c. [REDACTED]: [REDACTED] 1920 E-Yearbook will be sent to the subscribers through the UP Mail Account of [REDACTED], [REDACTED].</p>
<p>5. If applicable, where is the personal data stored and /or transmitted?</p>	<p>II. E-Yearbook Production:</p> <p>a. [Redacted] will save all information collected for [REDACTED] in the team's Google Drive during the production of the E-Yearbook. x x x x</p> <p>b. A day after the distribution, [REDACTED] shall delete all information submitted for the production of [REDACTED] from all storage devices used, which includes, but is not limited to, our team's Google Drive and respective hard drives.</p>
<p>6. What are the rights of the Data Subject?</p>	<p>V. [REDACTED] subscribers have the right to:</p> <p>a. Be notified if the collected information was received, adjusted, or proofread (during the production) via email. <i>(Right to be informed)</i></p> <p>b. Request access to the collected information for review. <i>(Right to access)</i></p> <p>i. The subscriber will receive his/her copy of her response to the google form via email.</p>

	<ul style="list-style-type: none"> ii. ██████████ shall release a draft copy of his/her personal page to each subscriber for final proofreading and modification. c. Update or redact the processed information submitted for the E-Yearbook. (<i>Right to rectify</i>) <ul style="list-style-type: none"> i. For immediate changes prior to receiving the draft copy of their page, the subscriber may notify [Redacted] via email, ii. For changes after receiving the draft copy of their page, (see b.ii.), feedback via email must be sent within a week of receipt of the file. d. Withdraw his/her participation in the E-Yearbook, before its publication. If the subscriber decides to withdraw, ██████████ will delete all of the information related to the said subscriber from the Google Drive and member's hard drives immediately. (<i>Right to erasure/blocking</i>)
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We kindly note, however, that a privacy notice is a requirement that is separate and distinct from the terms and conditions, copyright, and other disclaimer notices.⁴ Therefore, it should stand alone and be separated from the Disclaimer and Copyright Terms. This will also allow the data subject to be better informed on the nature and extent of the processing of his or her personal data.

Consent

Consent of the data subject, under Republic Act No. 10173, is 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. It is evidenced by any written, electronic, or recorded means.⁵

In order for consent to be specific, it must be obtained for the purpose for which it was intended.⁶ This requirement was reflected in the submitted document wherein the graduates had the option to choose the particular types of information that will be processed in relation to the publication of the e-yearbook.

⁴ National Privacy Commission Privacy Tool Kit, 3rd Ed., 2018

⁵ SEC. 3. *Definition of Terms.* – Whenever used in this Act, the following terms shall have the respective meanings hereafter set forth:

x x x x

(b) *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.

⁶ University of the Philippines Diliman Data Protection Office Advisory No. EBM 20-03, 27 May 2020

In addition, the check boxes, that are not pre-ticked, allows data subjects to perform an “affirmative act” indicating their consent to the processing⁷ of their selected personal information.

We kindly note, however, that there is a need to ensure that the act of ticking the boxes, be it through the use of Google Forms or individually accomplished PDF forms, be recorded in order for the said occurrence to be proven when necessary.

Lastly, it is humbly submitted that the use of the term “Consent” as a header for the consent portion/statement is more appropriate. This is to avoid any confusion as the term “Consent Form” refers to a standalone or separate document that is often more detailed in describing the processing of personal information.⁸ Whereas, a consent statement, on the other hand, is part of a broader document informing the data subject of the nature, purpose, and extent of the processing of his or her information *and* obtains consent for such processing.⁹

For your guidance.

Sincerely,

(Sgd.) Atty. Regine P. Estillore
Legal Officer
Data Protection Office
University of the Philippines Diliman

⁷ National Privacy Commission Advisory Opinion No. 2017-053, 11 September 2017

⁸ University of the Philippines Diliman Data Protection Office Advisory No. EBM 20-03, 27 May 2020

⁹ *Id.*