



23 March 2019

ADVISORY OPINION

Reference No. DPO 19-12

FOR : **[Redacted]**
[Redacted]

SUBJECT : **Request to Review NDA**

Dear [Redacted]:

We respond to your request for advice on the Non-Disclosure and Confidentiality Agreement (NDA) which you patterned from the version of the [Redacted]. We commend your draft as it faithfully adopts all key points in the [Redacted] NDA.

We have humbly observed that while [Redacted] NDA is good, it may have overlooked a number of items related to data protection. Understandably, your own version (adopted from [Redacted] NDA) also acquired these possible shortcomings. We note the following respectful observations on [Redacted] NDA:

Sections 1-4

[Redacted] NDA defines privileged information, confidential information and sensitive personal information. We respectfully note that [Redacted] NDA may have overlooked to define the most fundamental type of information protected by the Data Privacy Act: *personal information*.

Section 6

[Redacted] NDA requires our faculty and staff that they themselves implement

Requirements of strict confidentiality and processing

While [Redacted] NDA is admirable in that it prevents disclosure of "confidential/privileged information" in [Redacted], it may have overlooked to lay out the following regulatory requirements:

Operate and hold *personal information* as well as *sensitive personal information* under **strict confidence** (DPA IRR Sec. 26 (d) par. 2)

Process personal data only if there is a legitimate purpose (DPA IRR Sec. 18 (b))

Ensure the processing of personal data is necessary and not excessive to its purpose (DPA IRR Sec. 18 (c))

No employee of the government shall access sensitive personal information unless there is a security clearance (DPA IRR Sec. 31(a)(1))

Acceptable Use Policy, Restricted Access and Security Clearances

NPC Circular 16-01 requires government employees to comply with the Acceptable Use Policy, restricted access and security clearances imposed by their organization. It may be advisable that [Redacted] NDA includes a statement regarding these.

Specific operational measures

In addition to [Redacted] information" to be used in [Redacted], it may be advantageous to also impose *specific operational* measures to our people. The obligations of a personal information processor in DPA IRR Sec. 44(b) may be used as framework.

Please feel free to reach out for additional concerns.

Yours,

Elson Manahan
Data Protection Officer
University of the Philippines Diliman