



Republic of the Philippines  
NATIONAL PRIVACY COMMISSION

**PRIVACY POLICY OFFICE  
ADVISORY OPINION NO. 2018-036**

23 July 2018



**RE: DATA SHARING WITH THE MANILA INTERNATIONAL  
AIRPORT AUTHORITY (MIAA)**

Dear 

We write in response to your letter dated 6 June 2018 requesting for clarification regarding data sharing under Republic Act No. 10173,<sup>1</sup> also known as the Data Privacy Act of 2012 (DPA). Specifically, you seek to clarify whether air carriers may transfer personal information of ticket holders for the purpose of refunding terminal fees, without securing ticket holders' consent and without executing a data sharing agreement with the Manila International Airport Authority (MIAA).

We understand that since August 2012, members of the Air Carriers Association of the Philippines (ACAP), namely: Air Philippines Corporation (PAL Express), Cebgo, Inc. (Cebgo), Cebu Air, Inc. (Cebu Pacific), Philippine Airlines, Inc. (PAL), and Philippines AirAsia, Inc. (AirAsia), have been collecting terminal fees directly from prospective passengers for their flights from the Ninoy Aquino International Airport.

The carriers then remit the collected terminal fees to the MIAA after the passengers have taken their flights. The carriers submit the following to MIAA:

1. List of flights covered;
2. Number of passengers for each flight; and
3. Amount of terminal fees collected.

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<sup>1</sup> An Act Protecting Individual Personal Information in Information and Communications Systems in the Government and the Private Sector, Creating for this purpose a National Privacy Commission and for other Purposes [DATA PRIVACY ACT OF 2012], Republic Act No. 10173 (2012).

Thus, under the current system, carriers do not provide any personal information to the MIAA.

MIAA is currently looking into a possible transfer from the carriers to MIAA of the terminal fees collected, including unused and unrefunded fees, with the intention to refunding the same to the ticket holders unable to take their flights. This proposed system will necessarily entail the transfer of personal information of ticket holders from the carriers to MIAA.

### *Data Sharing*

The Implementing Rules and Regulations (IRR) of the DPA defines data sharing as the disclosure or transfer to a third party of personal data under the control or custody of a personal information controller.<sup>2</sup>

A data sharing agreement (DSA) refers to a contract, joint issuance, or any similar document that contains the terms and conditions of a data sharing arrangement between two or more personal information controllers.<sup>3</sup>

NPC Circular No. 16-02 sets out the guidelines for data sharing and DSAs involving government agencies. The circular covers personal data under the control or custody of a private entity that is being shared with or transferred to a government agency, and vice versa.<sup>4</sup> Furthermore, the issuance states that a DSA is required when personal data is shared or transferred for the purpose of performing a public function or providing of a public service.<sup>5</sup>

As mentioned above, the contemplated transfer of terminal fees collected, including unused and unrefunded fees for refunding the ticket holders, to MIAA, will necessarily entail the transfer of personal data of each ticket holder (i.e., names, birthdates, contact details, bank details, credit card details, flight details, other personal information) to MIAA.

Considering the foregoing, the contemplated transfer of collected fees and personal data from the air carriers to MIAA falls squarely under the meaning of data sharing. Thus, a data sharing agreement is required.

Subject to the separate determination of whether this proposed transfer of responsibility in refunding terminal fees to the MIAA is operationally feasible, it is recommended that an amendment of the existing Memorandum of Agreement between MIAA and the air carriers regarding the Passenger Service Charge (PSC) be made to include the required contents of a DSA pursuant to NPC Circular No. 16-02, and incorporate the data privacy principles, enforcement of the rights of data subjects, and implementation of appropriate security measures.<sup>6</sup>

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<sup>2</sup> Rules and Regulations Implementing the Data Privacy Act of 2012, Republic Act No. 10173, §3(f) (2016).

<sup>3</sup> NPC Circular No. 16-02, §3(E)

<sup>4</sup> *Id.*, §2.

<sup>5</sup> *Id.*, §1.

<sup>6</sup> *Id.*, §6.

Furthermore, it should be noted that bookings of ticket holders prior to the effectivity of the DPA is still covered by the DPA. As we understand, the air carriers still store and retain personal information in relation to the said bookings and transfer thereof is yet to be done. The storage, retention, and transfer thereof are considered processing<sup>7</sup> under the DPA and such processing is still ongoing until the present. As such, the DPA applies.

#### *Consent of ticket holders to the data sharing*

NPC Circular No. 16-02 provides that the consent of the data subjects to the data sharing is required except when such consent is not required for lawful processing<sup>8</sup> of personal data.<sup>9</sup>

Section 5 of Executive Order No. 903<sup>10</sup> states the following powers and functions of MIAA, among others:

- To control, supervise, construct, maintain, operate and provide such facilities or services as shall be necessary for the efficient functioning of the Airport;
- To promulgate rules and regulations governing the planning, development, maintenance, operation and improvement of the Airport and to control and/or supervise as may be necessary the construction of any structure or the rendition of any service within the Airport;
- To perform such other acts and transact such other business, directly or indirectly necessary, incidental or conducive to the attainment of the purposes and objectives of the Authority, including the adoption of necessary measures to remedy congestion in the airport;

As stated in MIAA Memorandum Circular No. 06, series of 2017, the refund of terminal fees for unused tickets is anchored on the abovementioned powers and functions of MIAA. Thus, the data sharing is considered necessary for compliance with a legal obligation to which the personal information controller is subject and is pursuant to existing laws and regulations. Considering the foregoing, the data sharing agreement may proceed without the need to obtain the consent of ticketholders.

Nevertheless, the ticket holders should be duly informed that their personal information will be shared with the MIAA for purposes of refunding of the terminal fees, pursuant to the right of data subjects to be informed of the processing of their personal information.<sup>11</sup>

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<sup>7</sup> Republic Act No. 10173, § 3(j) *Processing* refers to any operation or any set of operations performed upon personal information including, but not limited to, the collection, recording, organization, storage, updating or modification, retrieval, consultation, use, consolidation, blocking, erasure or destruction of data.

<sup>8</sup> See: Republic Act No. 10173, §12 and 13.

<sup>9</sup> See: NPC Circular No. 16-02, §4.

<sup>10</sup> Executive Order No. 903, Providing for a Revision of Executive Order No. 778 Creating the Manila International Airport Authority, Transferring Existing Assets of the Manila International Airport to the Authority, and Vesting the Authority with Power to Administer and Operate the Manila International Airport (July 21, 1983).

<sup>11</sup> See: Republic Act No. 10173, §16(a).

This opinion is being rendered based on the limited information you have provided. Additional information may change the context of the inquiry and the appreciation of the facts.

For your reference.

Very truly yours,

**(Sgd.) IVY GRACE T. VILLASOTO**  
OIC-Director IV, Privacy Policy Office

Noted by:

**(Sgd.) RAYMUND ENRIQUEZ LIBORO**  
Privacy Commissioner and Chairman