



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

**PRIVACY POLICY OFFICE
ADVISORY OPINION NO. 2018-017**

12 April 2018



Re: TRADE SECRETS

Dear ,

This pertains to your query received by the National Privacy Commission (NPC) via email. You seek to clarify whether trade secrets as recognized by jurisprudence as privileged communication falls under the scope of Republic Act No. 10173,¹ otherwise known as the Data Privacy Act of 2012 (DPA).

The Supreme Court in *Air Philippines Corporation vs. Pennswell, Inc.*² thoroughly discussed what constitutes a trade secret, to wit:

“A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. A trade secret may consist of any formula, pattern, device, or compilation of information that: (1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list.”³

By its very definition, trade secrets refer to information relating to plans, processes, tools and the like of a business. The DPA, on the other hand, was enacted to protect and secure personal data of individuals in information and communication systems in the government and in the

¹ 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” (15 August 2012).

² *Air Philippines Corporation v. Pennswell, Inc.*, 299 SCRA 744 (2007).

³ *Id.*, citations omitted.

private sector.⁴ Personal data includes all types of personal information, i.e. personal information, sensitive personal information and privileged information, the latter referring to any and all forms of data, which, under the Rules of Court and other pertinent laws constitute privileged communication.⁵

For the purposes of scope and protection under the DPA, the privileged information should constitute privileged communication under the Rules of Court and other laws, and relate to information about individuals.

Trade secrets that do not relate to individuals shall not fall under the scope of the DPA. However, as mentioned above, a specialized customer list may be a trade secret as well. If this involves a list of individual natural persons then the same may fall under the scope of the DPA as either personal or sensitive personal information, depending on what is included in such list or database.

Nonetheless, we note that jurisprudence has consistently upheld the privileged nature of trade or industrial secrets as an exemption from compulsory disclosure,⁶ thus, the unwarranted or unauthorized disclosure thereof is already protected.

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

⁴ Implementing Rules and Regulations (IRR) of the Data Privacy Act of 2012, §2.

⁵ Id., §3(q).

⁶ *Air Philippines Corporation*; See also *Mirpuri v. Court of Appeals*, 376 Phil. 628 (1999) and *Chavez v. Presidential Commission on Good Government and Magtanggol Gunigundo*, 360 Phil. 133, 161 (1998).