



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

**PRIVACY POLICY OFFICE
ADVISORY OPINION NO. 2019-020¹**

18 March 2019



**Re: DISCLOSURE OF PERSONAL INFORMATION AND BASIC CREDIT
DATA OF INDIVIDUAL BORROWERS FOR AUDIT PURPOSES**

Dear ,

We write in response to your request for an advisory opinion on the propriety of disclosing to the Commission on Audit (COA)-LBP State Auditors the personal information² and basic credit data³ of individual borrowers⁴ who availed and received loans from the Land Bank of the Philippines (LBP), for audit purposes and pursuant to the powers vested to COA under the 1987 Philippine Constitution and Rule II, Section 3 of its 2009 Revised Rules of Procedures.

In particular, you seek clarification on the propriety of disclosure given the exemption from the scope of the DPA, as claimed by COA.

Scope of the DPA

The Data Privacy Act of 2012 (DPA)⁵ applies to all types of processing of personal data,⁶ including disclosure of basic credit data of individual borrowers.

We affirm that Section 4 of the DPA and Section 5 of its Implementing Rules and Regulations

¹ Tags: Audit, Auditors, Borrowers, Credit Data, Commission on Audit, COA, Loans, Scope, Special cases, Public Authority.

² Data Privacy Act of 2012, § 3(g) - Personal information refers to any information whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual.

³ Republic Act 9510, 3(b) - "Basic Credit Data" refers to positive and negative information provided by a borrower to a submitting entity in connection with the application for and availing of a credit facility and any information on the borrower's creditworthiness in the possession of the submitting entity and other factual and objective information related or relevant thereto in the submitting entity's data files or that of other sources of information: Provided, that in the absence of a written waiver duly accomplished by the borrower, basic credit data shall exclude confidential information on bank deposits and/or clients funds under Republic Act No. 1405 (Law on Secrecy of Bank Deposits), Republic Act No. 6426 (The Foreign Currency Deposit Act), Republic Act No. 8791 (The General Banking Law of 2000), Republic Act No. 9160 (Anti-Money Laundering Law) and their amendatory laws.

⁴ R.A. 9510, 3(c) - "Borrower" refers to a natural or juridical person, including any local government unit (LGU), its subsidiaries and affiliates, that applies for and/or avails of a credit facility.

⁵ 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).

⁶ *Id.* § 4.

(IRR) exempt certain categories of information from its scope and application. However, such exemption applies only to the minimum extent of collection, access, use, disclosure or other processing necessary to the purpose, function, or activity concerned.⁷

Furthermore, the non-applicability is not absolute because the DPA still requires the personal information controller (PIC) or personal information processor (PIP) to comply with other conditions for personal data processing, including implementing security measures to protect personal data and upholding the rights of the data subjects.⁸

Thus, we emphasize that the requirements under the law, including penalties for violation thereof, will still be applicable to the processing of personal data that involves specific types of information belonging to any of the exemptions.

Criteria for lawful processing of personal information; mandate of the Commission on Audit

We take notice of the provision on confidentiality of information indicated under Part III Section X304.12 of the Manual of Regulations for Banks (MORB) Volume 1, which states:

Confidentiality of Information. Banks shall keep strictly confidential the data on the borrower or consumer, except under the following circumstances:

- a. disclosure of information is with the consent of the borrower or consumer;
- b. release, submission or exchange of customer information with other financial institutions, credit information bureaus, lenders, their subsidiaries and affiliates;
- c. **upon orders of court of competent jurisdiction or any government office or agency authorized by law, or under such conditions as may be prescribed by the Monetary Board;**
- d. disclosure to collection agencies, counsels and other agents of the bank to enforce its rights against the borrower;
- e. disclosure to third party service providers solely for the purpose of assisting or rendering services to the bank in the administration of its lending business; and
- f. disclosure to third parties such as insurance companies, solely for the purpose of insuring the bank from borrower default or other credit loss, and the borrower from fraud or unauthorized charges. (Circular No. 702 dated 15 December 2010)⁹

Based on the foregoing, all information pertaining to borrowers are strictly confidential unless the disclosure to be made by the banks falls under the circumstances enumerated, including disclosure to a government office or agency authorized by law.

On the other hand, the processing of personal and sensitive personal information may be based on the various criteria under Section 12 and 13 of the DPA, to wit:

SECTION 12. Criteria for Lawful Processing of Personal Information. - xxx

- (a) The data subject has given his or her consent;
- (b) The processing of personal information is necessary and is related to the fulfillment of a contract with the data subject or in order to take steps at the request of the data subject prior to entering into a contract;
- (c) The processing is necessary for compliance with a legal obligation to which the personal information controller is subject;
- (d) The processing is necessary to protect vitally important interests of the data subject, including life and health;

⁷ Rules and Regulations Implementing the Data Privacy Act of 2012, Republic Act No. 10173, § 5 (2016).

⁸ *Ibid.*

⁹ Part III, Section X304.12, Manual of Regulations for Banks (MORB), Volume 1.

- (e) **The processing is necessary in order** to respond to national emergency, to comply with the requirements of public order and safety, **or to fulfill functions of public authority which necessarily includes the processing of personal data for the fulfillment of its mandate;** or
- (f) The processing is necessary for the purposes of the legitimate interests pursued by the personal information controller or by a third party or parties to whom the data is disclosed, except where such interests are overridden by fundamental rights and freedoms of the data subject which require protection under the Philippine Constitution.

SECTION 13. Sensitive Personal Information and Privileged Information. – The processing of sensitive personal information and privileged information shall be prohibited, except in the following cases:

- (a) The data subject has given his or her consent, specific to the purpose prior to the processing, or in the case of privileged information, all parties to the exchange have given their consent prior to processing;
- (b) **The processing of the same is provided for by existing laws and regulations: Provided, That such regulatory enactments guarantee the protection of the sensitive personal information and the privileged information: Provided, further, That the consent of the data subjects are not required by law or regulation permitting the processing of the sensitive personal information or the privileged information;**
- (c) The processing is necessary to protect the life and health of the data subject or another person, and the data subject is not legally or physically able to express his or her consent prior to the processing;
- (d) The processing is necessary to achieve the lawful and noncommercial objectives of public organizations and their associations: Provided, That such processing is only confined and related to the bona fide members of these organizations or their associations: Provided, further, That the sensitive personal information are not transferred to third parties: Provided, finally, That consent of the data subject was obtained prior to processing;
- (e) The processing is necessary for purposes of medical treatment, is carried out by a medical practitioner or a medical treatment institution, and an adequate level of protection of personal information is ensured; or
- (f) The processing concerns such personal information as is necessary for the protection of lawful rights and interests of natural or legal persons in court proceedings, or the establishment, exercise or defense of legal claims, or when provided to government or public authority.

Pursuant to the 1987 Philippine Constitution, the COA has the authority to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations to ensure the proper and lawful use of government funds and properties.¹⁰

At the same time, the 2009 Revised Rules of Procedures of COA permits the auditors to exercise such power and functions as provided by law and as may be authorized by COA in the examination, audit and settlement of the accounts, funds, financial transactions of the agencies under their respective audit jurisdiction.¹¹

While COA claims that the exemption provided under Section 4(e)¹² of the DPA applies to

¹⁰ PHIL.CONST., Article IX-D, § 2 (2).

¹¹ 2009 Revised Rules of Procedures of the Commission on Audit, Rule II, § 3.

¹² Data Privacy Act of 2012, § 4 (e) - Information necessary in order to carry out the functions of public authority which includes the processing of personal data for the performance by the independent, central monetary authority and law enforcement and regulatory agencies of their constitutionally and statutorily mandated functions. Nothing in this Act shall be construed as to have amended or repealed Republic Act No. 1405, otherwise known as the Secrecy of Bank Deposits Act; Republic Act No. 6426, otherwise known as the Foreign Currency Deposit Act; and Republic Act No. 9510, otherwise known as the Credit Information System Act (CISA).

their request for the names of individual loan borrowers and credit data from LBP, the more appropriate basis for such disclosure is Section 12(e) of the DPA where the processing is necessary in order to fulfill functions of public authority which necessarily includes the processing of personal data for the fulfillment of its mandate, or Section 13(b) where the processing is provided for by existing law or regulation, as applicable.

In all instances, however, the processing of personal information should adhere to the principles of transparency, legitimate purpose, and proportionality.¹³ We highlight the principle of proportionality which entails that the processing must be necessary to achieve the objectives of the audit and not excessive in relation to the declared and specified purpose.

This opinion is rendered based on the 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

¹³ Data Privacy Act of 2012, § 11; Rules and Regulations Implementing the Data Privacy Act of 2012, § 17-18.