



Republic of the Philippines  
NATIONAL PRIVACY COMMISSION

**PRIVACY POLICY OFFICE  
ADVISORY OPINION NO. 2017-014**

13 March 2017



**Re: DATA SHARING AND DATA SHARING AGREEMENTS**

Dear ,

This pertains to your inquiry received by the National Privacy Commission (NPC) on 3 November 2016, via email, relative to certain provisions of the Data Privacy Act of 2012 (DPA) and its Implementing Rules and Regulations (IRR) vis-à-vis data sharing agreements between private entities. Please find below your queries, with their corresponding answers:

1. *Does data sharing, as defined in the IRR, also include the disclosure or transfer of personal information between 2 personal information controllers (PICs) such that the transferee PIC is considered a "third party" under the definition of "data sharing"?*

Data sharing is the disclosure or transfer to a third party of personal data under the control and custody of a PIC or personal information processor (PIP). In the case of the latter, such disclosure must be upon the instructions of the PIC concerned.<sup>1</sup> The term excludes outsourcing or subcontracting, which concerns the disclosure or transfer of personal data by a PIC to a PIP.<sup>2</sup>

By its very definition, a data sharing agreement can only be executed between or among PICs, as opposed to outsourcing, which is entered into by a PIC and a PIP.

2. *In a situation where both PICs that share data have registered data processing systems (thereby ensuring that the data privacy principles are upheld on both ends of the*

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<sup>1</sup> IRR, §3(f).

<sup>2</sup> *id.*

*information transfer chain), would a data sharing agreement contemplated by the DPA IRR still be required?*

The obligation of a PIC to enter into a data sharing agreement, when required to do so by the IRR and any subsequent issuance by the NPC, is separate and distinct from the obligation of a PIC or PIP to register a data processing system.

Thus, even if both PICs engaged in a data sharing arrangement have registered their respective data processing systems with the Commission, they are still mandated to enter into a data sharing agreement, in accordance with the IRR and any other criteria set by the NPC.

*3. Does the NPC foresee issuing a subsequent Memorandum Circular (MC) where the rules on data sharing will be clarified including provisions on when data sharing agreements should be in place?*

The NPC is actively working towards developing new policies aimed at ensuring the effective implementation of the DPA and its IRR. They include a separate circular providing further guidance on data sharing arrangements between private parties. In the interim, such arrangements shall be governed by the provisions of the IRR.<sup>3</sup>

For reference purposes, there is also NPC Circular No. 16-02, dated 10 October 2016, which concerns data sharing that involving government agencies. That Circular also covers personal data under the control or custody of a private entity that is being shared with or transferred to a government agency.<sup>4</sup>

*4. Are private entities engaged in data sharing now required to enter into data sharing agreements? Or should private entities wait for an MC on data sharing for private entities?*

Private entities currently engaged in data sharing are required to enter into data sharing agreements in accordance with the provisions of the IRR, particularly Section 20 thereof, even sans an NPC Circular on the matter. Any relevant subsequent issuance by the NPC shall only serve to complement the requirements already established in the IRR.

The one-year period given in the second paragraph of Section 67 of the IRR, including the possible extension thereof, pertain to the requirement for registration of data processing systems, and of automated processing operations. Thus, PICs and PIPs are already mandated to comply with the other requirements of the DPA and its IRR as soon as both policies became effective.

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<sup>3</sup> *see*: IRR, §20.

<sup>4</sup> NPC Circular No. 16-02, §2.

5. *Does the compliance period provided in the DPA and its IRR apply to private entities currently engaged in data sharing?*

Provisions of the DPA that do not require any clarificatory or supplemental issuance from the Commission in order to be implemented became effective as soon as the DPA itself became effective on 8 September 2012. Thus, except where the law provides otherwise, all covered entities were bound to comply with those provisions beginning that same day. In the case of the IRR, that issuance became effective on 9 September 2016.

6. *Would it be possible to trigger an application for extension (within which to comply with issuances of the NPC) via a request letter stating that the entities that commenced data sharing prior to the DPA IRR, intend to comply with the Rules and to request for a specific period (which will be less than 1 year) within which to sign the data sharing agreement?*

At the moment, there is no particular format being prescribed for requests for extension to comply with the issuances of the NPC, as contemplated in the last paragraph of Section 67 of the IRR. Each request will be assessed individually and based on its attendant merits, as adequately shown by the requesting party.

7. *Would the NPC accommodate a request for consultation/advisory process regarding data sharing from private entities so that their counsels and compliance personnel can review the process with the NPC, and discuss the scope of the agreement and any proposed arrangements? If so, can the NPC provide guidance as to how this process can be triggered by private entities?*

The advisory/consultation process contemplated in NPC Circular No. 16-02 is currently limited only to (proposed) DSAs involving government agencies. This is particularly true for those where the inputs and/or comments of the Commission is sought regarding a specific data sharing arrangement. With its limited capacity, the NPC is already running on fumes when trying to attend to queries from government agencies regarding their data sharing concerns. It would simply be unable to accommodate at this time similar requests from private parties.

With this, it should be stressed that prior approval by the Commission is not necessary for the proper execution by private sector entities of a DSA. Parties need only ensure that such document abides by the provisions of the IRR. Any subsequent NPC Circular concerning DSAs in the private sector will be applied prospectively and may not be used to invalidate a DSA executed prior to its effectivity.

8. *Absent any specific Memorandum Circular for data sharing agreements between private entities, would it be correct to assume that, provided that such agreements*

*comply with paragraph 2 of Section 20(b) of the DPA IRR, they will be considered as being compliant with the requirements for data sharing agreements?*

Parties seeking information regarding the proper execution of data sharing agreements must generally look to Section 20 of the IRR. While subsection (b) thereof has particular focus on the private sector, reference must still be made to other provisions of the IRR and the DPA to ensure full compliance with the law. Absent any further issuance on the matter by the NPC, the latter's Circular No. 16-02 should also be consulted for further guidance.

*9. Can private entities pattern their data sharing agreements after the guidelines provided for agreements involving government entities?*

Yes. At present, the main source for guidelines that deal directly with data sharing agreements in the private sector is Section 20 of the IRR. The provisions of NPC Circular No. 16-02 may also be utilized as additional reference for the purpose of crafting a data sharing agreement.

For your reference.

**RAYMUND ENRIQUEZ LIBORO**  
Privacy Commissioner and Chairman