



Republic of the Philippines  
NATIONAL PRIVACY COMMISSION

**PRIVACY POLICY OFFICE  
ADVISORY OPINION NO. 2017-020**

18 July 2017



**Re: PHILIPPINE BUSINESS DATA BANK**

Dear 

This pertains to your request for advisory opinion dated 10 April 2017, received by the National Privacy Commission (NPC) on 19 April 2017, in relation to the Philippine Business Data Bank (PBDB), an initiative of the Ease of Doing Business Component of the DOF Anti-Red Tape Program.

Specifically, you are requesting for an opinion on whether or not the data collected and to be shared by and among certain government agencies, and to the public pursuant to the PBDB is exempt from the coverage of the Data Privacy Act of 2012 (DPA).

*Philippine Business Data Bank (PBDB)*

We understand that the PBDB is an online facility that consolidates publicly-accessible, business-related data sourced from government regulatory agencies. This online portal digitizes the data collected by each of the following agencies from natural and juridical persons engaged in business:

1. Cooperative Development Authority (CDA);
2. Department of Trade and Industry (DTI);
3. Securities and Exchange Commission (SEC);
4. Local Government Units (LGUs); and
5. Bureau of Fire Protection (BFP).

The common data collected by each of the above are as follows:

1. Business Name;
2. Regulatory Reference ID;
3. Registration Date;
4. Expiry Date;

5. Status (registered or not);
6. Address;
7. City/Municipality;
8. Contact Number;
9. PSIC Reference;
10. Tax Identification Number;
11. Agency Code/LGU Code; and
12. Names of Individuals:

<b>CDA</b>	<b>DTI</b>	<b>SEC</b>	<b>LGUs</b>
Board Members	Business Owners	Incorporators	Business Owners

*Scope of the DPA*

At the outset, we wish to clarify that the DPA is applicable to the processing of all types of personal information<sup>1</sup>, sensitive personal information<sup>2</sup>, and privileged information<sup>3</sup> (collectively referred to as personal data), and to any natural and juridical person involved in personal information processing within and without<sup>4</sup> the Philippines.

We note that the list of data above is not wholly composed of personal data as most of these pertain to data of juridical entities. The personal data in the list would likely pertain to the details of the following:

1. Individuals who are engaged in business through sole proprietorships and possibly partnerships;
2. Incorporators of corporations and cooperators of cooperatives;
3. Members of the board of directors or trustees;
4. Officers of corporations (including resident agents of foreign corporations licensed to do business in the Philippines) and cooperatives; and
5. Individual stockholders of stock corporations and individual members of non-stock corporations and cooperatives.

Thus, Items 1 to 11 of the list may pertain to a juridical entity, hence, not covered by the DPA. In the case of sole proprietorships and possibly partnerships, the same items may be considered as personal data.

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<sup>1</sup> RA No. 10173, §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.

<sup>2</sup> Id., §3(l) - Sensitive personal information refers to personal information:

- 1.) About an individual’s race, ethnic origin, marital status, age, color, and religious, philosophical or political affiliations;
- 2.) About an individual’s health, education, genetic or sexual life of a person, or to any proceeding for any offense committed or alleged to have been committed by such person, the disposal of such proceedings, or the sentence of any court in such proceedings;
- 3.) Issued by government agencies peculiar to an individual which includes, but not limited to, social security numbers, previous or current health records, licenses or its denials, suspension or revocation, and tax returns; and
- 4.) Specifically established by an executive order or an act of Congress to be kept classified.

<sup>3</sup> Id., §3(k) - Privileged information refers to any and all forms of data which under the Rules of Court and other pertinent laws constitute privileged communication.

<sup>4</sup> See §6 of RA No. 10173 – Extraterritorial Application

In the instances where personal data may be involved in the consolidation of business-related data of the PBDB, there is a need to determine if such personal data falls under the special cases which is outside of the scope of the law.

As stated in the request, Sections 4(c) and (e) of the DPA may be a basis for the exemption, to wit:

“SECTION 4. Scope. – xxx

This Act does not apply to the following: xxx

c. Information relating to any discretionary benefit of a financial nature such as the granting of a license or permit given by the government to an individual, including the name of the individual and the exact nature of the benefit;

xxx

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. xxx”

We agree that the personal data falling under the abovementioned provisions is outside the scope of the DPA. But for purposes of the DOF and for the other government agencies involved in the PBDB, the exemption more aptly finds basis in Section 4(e) and not Section 4(c).

Section 4(c) speaks of information relating to any discretionary benefit of a financial nature. The phrase “discretionary benefit” has been defined in other jurisdictions as follows:

"The prime factor is a 'discretionary' benefit, but not a 'gratuitous' benefit, nor yet an 'exclusive' benefit, or even a cut-rate, or 'bargain basement' benefit. Any of those imagined adjectives would narrow down paragraph 3(l)'s purview. The kind of benefit contemplated here could well, on the words of the statute, be nothing more than one of the constituent elements of consideration, or quid pro quo, known to the law of contracts. In a real sense every contract involves the conferring of a benefit on the other party and the enduring of a detriment, on oneself. The statute mentions only the conferring of a discretionary benefit from the government institution's point of view. It is so composed that it does not need to mention the quid pro quo, because the conferred benefit is not so narrowly contemplated as to be gratuitous nor yet exclusive or cut-rate. The wording is sufficient to cover all of those narrower notions, so long as the benefit be conferred upon the discretion of a government institution, official or employee and is of a financial nature. The exacting of rent money from a tenant is 'of a financial nature' just as surely as the according to the tenant of quite, exclusive occupation of the premises during the term of the lease is conferring a 'discretionary benefit'.<sup>5</sup>

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<sup>5</sup> Office of the Information Commissioner of Canada, citing *Bland v. Canada (National Capital Commission)*, [1991] 3 F.C. 325; 41 F.T.R. 202, 4 Admin D.L.R. (2d) 171; 36 C.P.R. (3d) 289 (T.D.), available at [http://www.oic-ci.gc.ca/eng/inv\\_inv-gui-ati\\_gui-inv-ati\\_section\\_19.aspx](http://www.oic-ci.gc.ca/eng/inv_inv-gui-ati_gui-inv-ati_section_19.aspx)

In the above case, the Canadian court found that “the National Capital Commission exercised a discretion in accepting or rejecting those who seek to become its' tenants of real property. The people chosen received a discretionary benefit because the rental payments were of smaller amounts than for comparable residential properties. On that basis, the information sought by the applicant was said not to be included in definition of 'personal information'. On that basis, the court ordered disclosure of the name, addresses, and property designations of NCC residential tenants.”<sup>6</sup>

We understand that the CDA, DTI, SEC, LGUs and BFP in their respective regulatory mandates to register and/or issue licenses or permits are not given discretionary powers to determine who becomes registered or not. The individual or entity applying would have to submit all documentary requirements necessary for registration, and upon compliance, the registration or permit will be issued. There is no discretion on the part of any of the abovementioned government agencies insofar as this particular regulatory mandate is concerned.

With this, it is clear that Section 4(c) is not applicable to the business-related registration data sought to be consolidated by the PBDB.

As mentioned above, we believe that Section 4(e) may be made the basis for exemption of the PBDB data as the same information is necessary in order to carry out the functions of public authority.

However, we wish to emphasize that the exemption not absolute. The DPA and its Implementing Rules and Regulations (IRR) shall not apply to the specified information, but the exemption is limited “only to the minimum extent of collection, access, use, disclosure or other processing necessary to the purpose, function, or activity concerned,” as stated in Section 5 of the IRR.

Further, the proviso in said section states:

*“Provided, that the non--applicability of the Act or these Rules do not extend to personal information controllers or personal information processors, who remain subject to the requirements of implementing security measures for personal data protection; Provided further, that the processing of the information provided in the preceding paragraphs shall be exempted from the requirements of the Act only to the minimum extent necessary to achieve the specific purpose, function, or activity.”*

This is interpreted to the effect that there is a presumption that personal data may be lawfully processed by a personal information controller or processor under the special cases, but the processing shall be limited to achieving the specific purpose, function or activity, and that the personal information controller or processor remains to be subject to the requirements of implementing measures to secure and protect personal data.

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<sup>6</sup> Office of the Information Commissioner of Canada, citing *Bland v. Canada (National Capital Commission)*, [1991] 3 F.C. 325; 41 F.T.R. 202, 4 Admin D.L.R. (2d) 171; 36 C.P.R. (3d) 289 (T.D.), available at [http://www.oic-ci.gc.ca/eng/inv\\_inv-gui-ati\\_gui-inv-ati\\_section\\_19.aspx](http://www.oic-ci.gc.ca/eng/inv_inv-gui-ati_gui-inv-ati_section_19.aspx)

For instance, a government agency having a statutory mandate to collect, access, use, disclose, and generally process personal data may do so even without the consent of the data subject.

But such processing is limited to the bare minimum to achieve the agency's mandate, which means that the agency shall collect only those data which it needs to perform its functions, use these for the specified purpose only, and disclose only those data which are required to be disclosed to other co-regulators or to the public, if necessary.

And the above is with the concomitant responsibility of ensuring that organizational, physical and technical security measures are in place to protect the personal data that the agency is processing.

Finally, we would like to remind all government agencies involved in the PBDB of the obligations set out in NPC Circular No. 16-01 - Security of Personal Data in Government Agencies and NPC Circular No. 16-02 - Data Sharing Agreements Involving Government Agencies.

The first circular provides for the general obligations of government agencies engaged in the processing of personal data and rules on storage, access, transfer, and disposal of personal data, and the second requires the review of all existing data sharing arrangements and/or actual contracts, joint issuances, or any similar documents, and make the necessary revisions thereto, execution of a data sharing agreement (DSA) where applicable, and the immediate termination the sharing of personal data in instances where the arrangement is not for the purpose of performing a public function or providing a public service.

For your reference.

Sincerely,

**RAYMUND E. LIBORO**  
Privacy Commissioner and Chairman