



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

**PRIVACY POLICY OFFICE
ADVISORY OPINION NO. 2020-031¹**

6 August 2020



**RE: ACCESS TO FILES AND RECORDS OF ANTI-ILLEGAL
DRUGS OPERATIONS OF THE PHILIPPINE DRUG
ENFORCEMENT AGENCY**

Dear [REDACTED]

We write in response to your letter which sought the opinion of the National Privacy Commission (NPC) on whether the request for access by the Inter-Agency Review Panel, and the Department of Justice (DOJ) Panel of Prosecutors as stated in your letter, to files and records involving negation operations of the Philippine Drug Enforcement Agency (PDEA) is allowed under the Data Privacy Act of 2012² (DPA).

DOJ; Inter-Agency Review Panel; public authority

The DOJ derives its mandate primarily from the Executive Order No. 292.³ Under EO 292, the DOJ is the government's principal law agency, and serves as the government's prosecution arm and administers the government's criminal justice system by investigating crimes, prosecuting offenders, and overseeing the correctional system.⁴

In particular, Section 90 of Republic Act No. 9165 as amended, otherwise known as the Comprehensive Dangerous Drugs Act of 2002⁵ (CDDA) provides that:

¹ Tags: lawful processing of personal data; special cases; public authority; mandate.

² 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).

³ Instituting the Administrative Code of 1987 [Administrative Code of 1987], Executive Order No. 292, BOOK IV, Title III, Chapter 1-General Provisions (1987).

⁴ Department of Justice, About, available at <https://www.doj.gov.ph/vision-mission-and-mandate.html> (last accessed 6 August 2020).

⁵ An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, As Amended, Providing Funds Therefor, and for other purposes [The Comprehensive Dangerous Drugs Act of 2002] Republic Act No. 9165 (2002).

Section 90. Jurisdiction. – The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to exclusively try and hear cases involving violations of this Act. The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction.

xxx xxx xxx

The DOJ shall designate special prosecutors to exclusively handle cases involving violations of this Act. (underscoring supplied).

From the above, the DOJ is a public authority mandated by the law to investigate the commission of crimes such as, among others, violations of the CDDA and to prosecute offenders through the National Bureau of Investigation and the National Prosecution Service, respectively.

As to the Inter-Agency Review Panel (Panel), we understand that the same was “formed to evaluate the over 5,000 operations of law enforcers against illegal drugs which resulted in the death of suspects involved in the drug trade.”⁶

We understand further that the Panel is chaired by the Secretary of Justice, and composed of representatives from the Department of the Interior and Local Government (DILG), Presidential Human Rights Committee Secretariat (PHRCS), Presidential Management Staff (PMS), DOJ-National Prosecution Service (NPS), Department of Foreign Affairs (DFA), Presidential Communications Office (PCOO), PDEA, Dangerous Drugs Board (DDB), Philippine National Police (PNP) and the National Bureau of Investigation (NBI).⁷

With this, such Panel composed of various government agencies, is likewise acting based on their respective mandates which includes the investigation and evaluation of anti-illegal drugs operations.

Scope of the DPA; criteria for lawful processing of personal and sensitive personal information; mandate; law; security measures

Section 4 of the DPA states that the law is applicable to the processing of all types of personal information and to any natural and juridical person involved in personal information processing.

The processing of personal and sensitive personal information (collectively, personal data) by the DOJ and the Panel finds support in the DPA, specifically Sections 12 and 13 thereof providing the criteria for lawful processing, *to wit*:

Section 12. *Criteria for Lawful Processing of Personal Information.* – The processing of personal information shall be permitted only if not otherwise prohibited by law, and when at least one of the following conditions exists: xxx xxx xxx

(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

⁶ Department of Justice letter addressed to the PDEA dated 17 July 2020, attached to the PDEA letter request.

⁷ *Id.*

which necessarily includes the processing of personal data for the fulfillment of its mandate. xxx xxx xxx

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: xxx xxx xxx

(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. xxx xxx xxx

(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. (underscoring supplied)

We are mindful of the mandates of the DOJ and the Panel and the necessity of examining the pertinent files and records of the PDEA in order to “*determine whether administrative and/or criminal complaints should be filed/re-filed against law enforcement agents arising from their operations and, if warranted, recommend changes in the protocols in law enforcement operations against illegal drugs.*”⁸

We reiterate that the DPA is not an obstacle to the collection and processing of personal data by the various government agencies as long as the same is necessary for the fulfillment of their respective mandates.⁹ This is with the concomitant responsibility of complying with the requirements of the DPA, its Implementing Rules and Regulations, and other issuances of the NPC.¹⁰

Finally, any personal data processing should always adhere to the general data privacy principles of transparency, legitimate purpose, and proportionality. Government agencies, as personal information controllers, must implement reasonable and appropriate safeguards to secure and protect personal data, considering the provisions of NPC Circular No.16-01 on the Security of Personal Data in Government Agencies.

This opinion is 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.) RAYMUND ENRIQUEZ LIBORO
Privacy Commissioner

⁸ Department of Justice letter addressed to the PDEA dated 17 July 2020, attached to the PDEA letter request.

⁹ See: National Privacy Commission, NPC Advisory Opinion No. 2019-040 (Oct. 17, 2019), citing National Privacy Commission, NPC Advisory Opinion No. 2018-083 (Nov. 26, 2018).

¹⁰ *Id.*