

# Common questions on data privacy and FOI

# Objectives

- ▶ Answer frequently asked questions regarding personal data processing of government agencies
- ▶ Provide additional guidance to Data Protection Officers and FOI Decision Makers

# Data Privacy and FOI

## **Right to Data Privacy**

The “right to be let alone”

The individual’s ability to control the flow of information concerning or describing him or her.

## **Free Flow of Information**

Right to information or Freedom of information

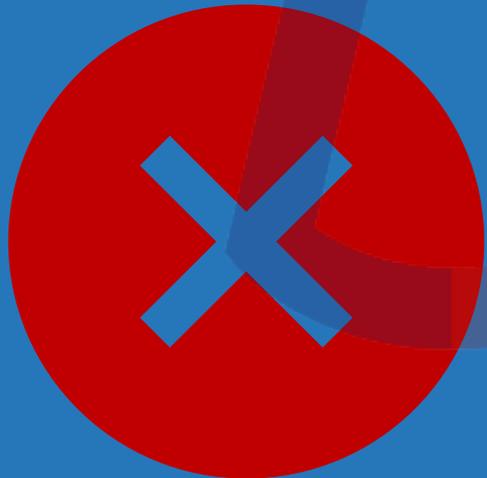
Freedom of the press

Research

Is there  
conflict  
between the  
DPA and  
FOI?

**None.**

- ▶ Both are essential human rights that are necessary in a democracy.
- ▶ Complementary rights especially in ensuring government's accountability.



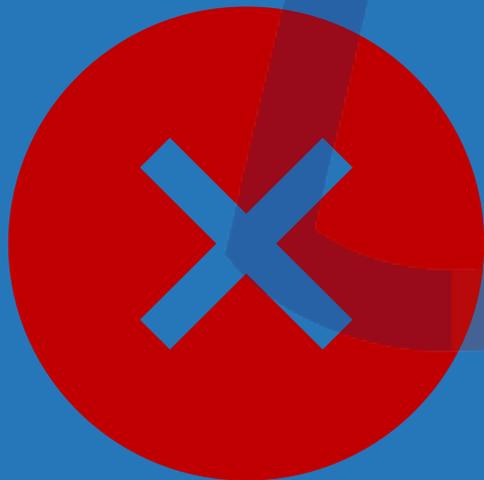
How do we handle FOI requests which pertain to personal data?

## Check:

- ▶ The purpose is not contrary to law, morals, public order, and public policy.
- ▶ The document/information may be disclosed under EO No. 2, s. 2016, or any other law or regulation, and jurisprudence.
- ▶ Disclose what is necessary to the purpose.



Are we exempt from complying with the provisions of the DPA because we fall under the special cases?

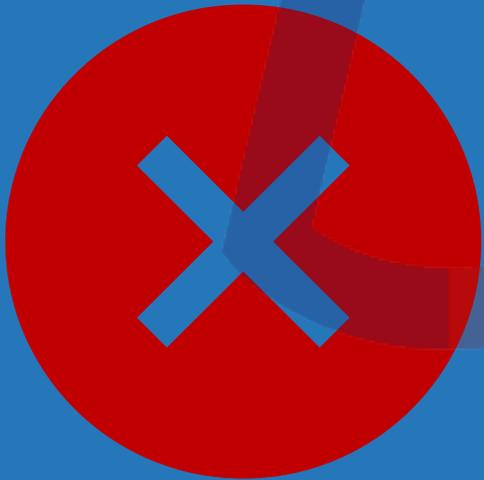


# DPA special cases

## PERSONAL DATA



Are we exempt from complying with the provisions of the DPA because we fall under the special cases?



**No.**

Government agencies must still:

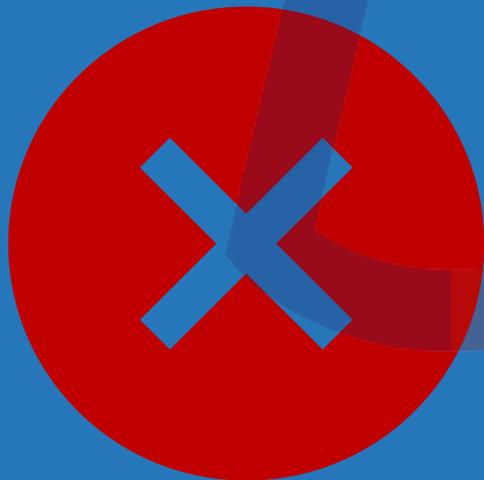
- Adhere to transparency, legitimate purpose, and proportionality
- Uphold data subject rights
- Implement security measures
- Comply with the five pillars of accountability and compliance

How much  
personal  
data can we  
collect?

# Proportionality



Do we  
always need  
to get  
consent to  
process  
personal  
data?



**No.**

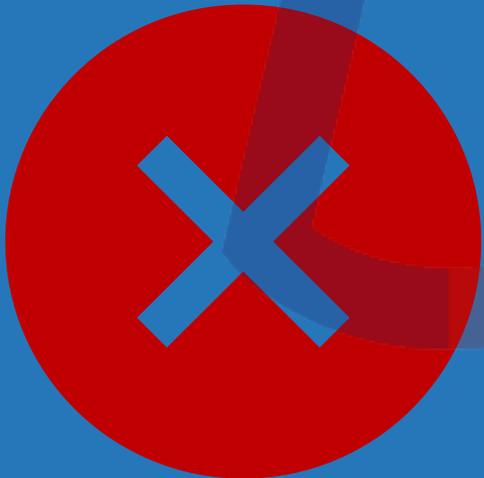
## Section 12

- Consent
- Contract
- Compliance with a legal obligation
- Protect vital interests of the data subject, including life and health
- National emergency, public order and safety, or fulfill functions of a public authority
- Legitimate interests

## Section 13

- Consent
- Existing law and regulation
- Protection of life and health
- Public organizations
- Medical treatment
- Lawful rights and interests in court proceedings, establishment/exercise/defense of legal claims, and when provided to govt.

**Is compliance with other laws requiring submission/sharing of personal data a violation of the DPA?**



**No.**

The DPA:

- Has the twin task of protecting the right to privacy while ensuring the free flow of information
- Should be read together with existing laws
- Not meant to prevent government from processing personal data when necessary to fulfill their mandates

**NPC ADVISORY OPINION NO. 2019-018; 2018-035; 2018-083**

Can we provide the COA with the requested documents for an audit even if the same contains personal data?



**Yes.**

- ▶ COA, in carrying out its mandate, enjoys the presumption of regularity in the performance of its duties.
- ▶ COA is a personal information controller (PIC) having obligations under the DPA to protect personal data it processes.

**NPC ADVISORY OPINION NO. 2020-016; 2019-020**

Can we grant requests for information of agencies exercising investigative functions?

# Generally, yes.

- ▶ Government agencies mandated to investigate crimes and offenses, conduct lifestyle checks, evaluate law enforcement operations, etc., may lawfully process personal data based on mandate.
- ▶ But must strictly follow set procedures in the conduct of such investigations and adhere to general data privacy principles.

**NPC ADVISORY OPINION NO. 2020-031; 2019-022; 2018-079**

Can we grant requests for information of law enforcement agencies?

# Generally, yes.

- ▶ The disclosure of personal information to law enforcement agencies may be allowed when it is pursuant to its mandate.
- ▶ Nevertheless, the processing must adhere to the principles of transparency, legitimate purpose and proportionality.
- ▶ Law enforcement does not have a blanket authority to access personal data.

**NPC ADVISORY OPINION NO. 2018-049; 2017-056**

# Can we grant requests for information of the media?

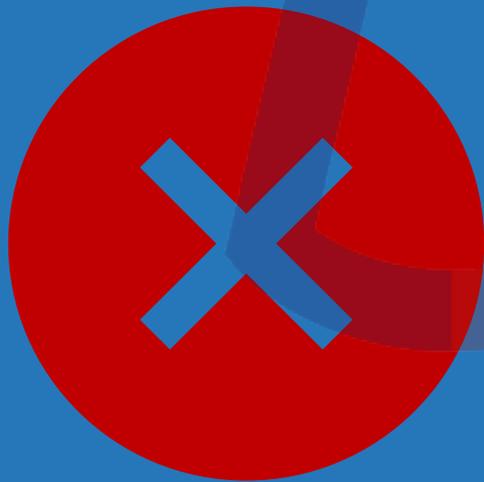


## It depends.

- ▶ Consider:
  - ▶ whether the disclosure of statistical or aggregate information without including any personal data would suffice.
  - ▶ any overriding public interest to disclose personal data (balance an individual's data privacy vis-à-vis the public's right to information).
- ▶ Whenever there is uncertainty: lean towards an interpretation that is mindful of the rights and interests of the individual.
- ▶ Remember: while media should be given leeway to enable them to effectively perform their role in a democracy, such freedom must be balanced with responsibility.

**NPC ADVISORY OPINION NO. 2019-024; 2018-049**

**Do we always have to execute a data sharing agreement (DSA) for all sharing arrangements?**



**No.**

- ▶ If there is a law/regulation/issuance requiring the data submission/sharing/transfer/furnishing/reporting/etc., a separate DSA is not mandatory.
- ▶ Nevertheless: govt. agencies may execute a DSA should they wish to do so, perhaps to provide details of the data submission, to outline the security measures, etc.
- ▶ DSAs need not be reviewed/approved by the NPC.

**NPC Circular No. 2016-02; NPC ADVISORY OPINION NO. 2020-035; 2019-043; 2018-041; 2017-038**

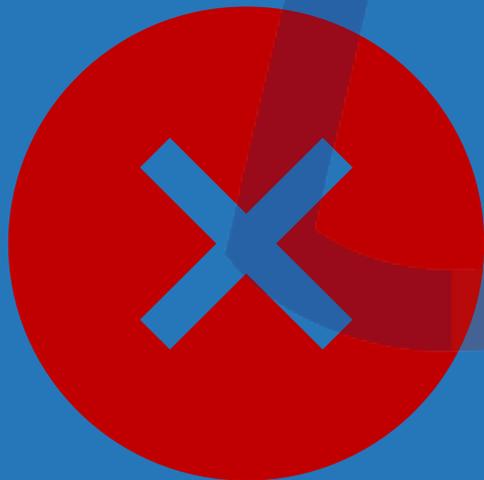
# Can a government agency appoint more than one DPO?

## Yes.

- ▶ Factors to consider: complexity of operations and the volume of personal data being processed, number of data processing systems, etc.
- ▶ But for NPC registration purposes: submit the name of the main DPO who shall be the focal point person.
- ▶ See NPC Advisory 17-01 for further guidance on the qualifications, instances regarding the appointment of a DPO and compliance officer for privacy (COP).



**Will a DPO be automatically held liable if the agency suffers a personal data breach?**



**No.**

- ▶ Penalties under the DPA are imposed upon the responsible officers who:
  - participated in; or
  - allowed the commission of the crime by their gross negligence.
- ▶ Liability is determined on a case-to-case basis.

Collect what  
is necessary.  
Disclose  
only to the  
proper  
authority.

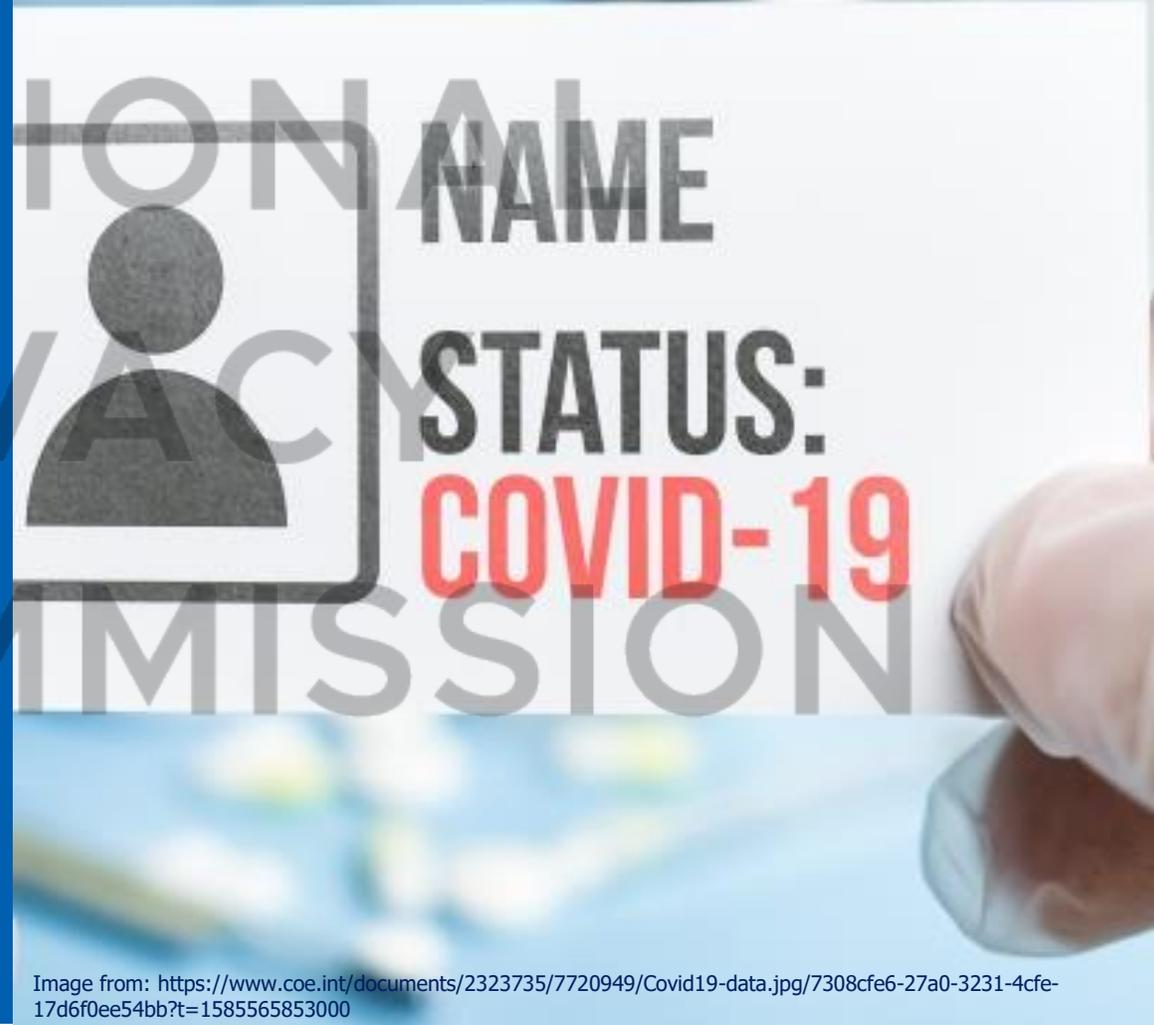


Image from: <https://www.coe.int/documents/2323735/7720949/Covid19-data.jpg/7308cfe6-27a0-3231-4cfe-17d6f0ee54bb?t=1585565853000>

**Can we publicly post certain details of the beneficiaries of the various COVID-19 response programs of the government?**

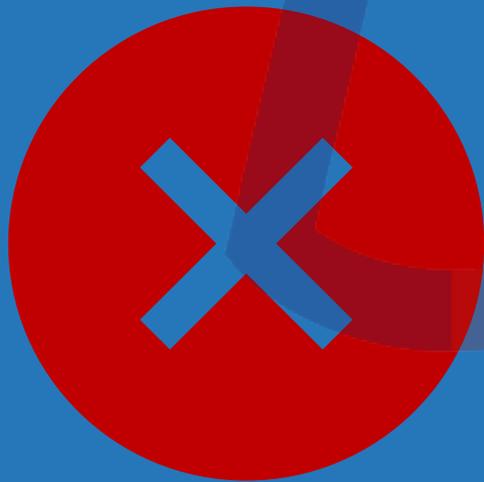


**Yes.**

- ▶ Disclosure must comply with the requirements established by law/jurisprudence for allowable public disclosures of information on matters of public concern.
- ▶ Disclosure should be limited to that which is necessary, i.e. name, amounts received, etc.
- ▶ No sensitive personal information should be posted.
- ▶ Disclosure is strictly for the purpose of promoting transparency and public participation.

**NPC ADVISORY OPINION NO. 2020-019; 2020-026**

Can we publicly release the identities of COVID-19 confirmed cases for contact tracing?



**No.**

- ▶ Contact tracing does not require public disclosure of identities of COVID suspects, probable, and confirmed cases.
- ▶ Unbridled disclosure of patients' personal data to the public has been proven to cause a real risk of severe harm (physical assault, harassment, discrimination, etc.)
- ▶ The DPA has never been a hindrance to contact tracing – the law does not prevent government from processing personal data when necessary to fulfill their mandates.

**NPC ADVISORY OPINION NO. 2020-022**

**Can we collect health information of employees as part of keeping the workplace safe?**

**Yes.**

- ▶ Collect personal data that are necessary to control the spread of the virus and keep employees safe.
- ▶ Once collected, safeguards should be in place to ensure the security of the physical or electronic forms used.
- ▶ Set a policy (who is authorized to gather information, how to secure the information, how to disclose it to authorities when necessary, etc.)

**NPC PHE Bulletin No. 14: Updated Frequently Asked Questions (FAQs)**

# NPC COVID-19 BULLETINS

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#RightToDataPrivacy  
#DataPrivacyIsARight

[Click here for the updates](#)



<https://www.privacy.gov.ph/list-of-npc-issuances-related-to-covid-19/>