



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

**PRIVACY POLICY OFFICE
ADVISORY OPINION NO. 2021-027¹**



**Re: ACCESS TO DOCUMENTS BY SAN MIGUEL AEROCITY INC.
PURSUANT TO ITS LEGISLATIVE FRANCHISE**

Dear 

We write in response to your letter received by the National Privacy Commission (NPC) which sought clarification on certain data privacy issues relating to the implementation of the New Manila International Airport (NMIA) project.

We understand that San Miguel Aerocity, Inc. (SMAI) was granted a legislative franchise under Republic Act (RA) No. 11506² to construct, operate, and maintain the NMIA, an Airport City adjacent to the NMIA, and rights of way that will provide ingress and egress from the airport and the Airport City (collectively, the Projects).

We understand further that Section 15 of RA No. 11506 delegated to SMAI the power of eminent domain. Corollary to the said power, there are obligations imposed under RA No. 10752 or the Right-of-Way Act³ which require access to copies of certain documents relating to the properties which may be acquired by SMAI through purchase, negotiation, expropriation, or condemnation proceedings. These documents are held by various government agencies and may contain personal and/or sensitive personal information (collectively, personal data).

You now ask whether SMAI may be provided with these documents and process the personal

¹ Tags: legislative franchise; eminent domain; right of way; scope; special cases; lawful criteria for processing; legal obligation; laws and regulations; legal claims.

² An Act Granting San Miguel Aerocity Inc. A Franchise To Construct, Develop, Establish, Operate And Maintain A Domestic And International Airport In The Municipality Of Bulakan, Province Of Bulacan, And To Construct, Develop, Establish, Operate, And Maintain An Adjacent Airport City, Republic Act No. 11506 (2020)

³ An Act Facilitating The Acquisition Of Right-Of-Way Site Or Location For National Government Infrastructure Projects [The Right-of-Way Act], Republic Act No. 10752 (2016)

data contained therein pursuant to Sections 5 (c) and (d) and Section 22 (b) of the Implementing Rules and Regulations⁴ (IRR) of the Data Privacy Act of 2012⁵ (DPA).

Scope of the DPA; special cases; lawful basis for processing; legal obligation; laws and regulations

We wish to clarify that the DPA only applies to the processing of personal data of natural persons and not information of juridical entities recognized under the law, such as corporations, associations, and partnerships.

Thus, if the requested copies of titles, tax declarations, business permits, tax identification numbers, certifications, registrations, clearances, and other documents pertain to a juridical person, the DPA does not apply.

As to those which pertain to natural persons, the processing of the same should have a lawful basis under the DPA. As mentioned in your letter, you posit that SMAI's processing is anchored on Sections 5 (c) and (d) and Section 22 (b) of the DPA's IRR, which refers to information necessary for research, for carrying out functions as a public authority, and processing that is provided for by existing laws and regulations, respectively. Moreover, as specified in your letter, the SMAI's right and authority over the requested documents refer to the exercise of its right of eminent domain for a legitimate purpose as specified under its franchise as provided for by Congress, in order to undertake a national government infrastructure project.

While we recognize SMAI's personal data processing activities based on its legislative franchise, the same is not processing under a special case, but rather is more appropriately based on Sections 12 (c) and/or Section 13 (b) and (f) of the DPA, depending on the type of personal data being processed, 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:

x x x

(c) The processing is necessary for compliance with a legal obligation to which the personal information controller is subject;

x x x

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:

x x x

(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

⁴ Rules and Regulations Implementing the Data Privacy Act of 2012, Republic Act No. 10173 (2016).

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).

data subjects are not required by law or regulation permitting the processing of the sensitive personal information or the privileged information; x x x

(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)

General data protection principles; proportionality; safeguards

In Advisory Opinion No. 2020-036,⁶ we discussed a similar concern of the National Grid Corporation of the Philippines (NGCP) as to their request to secure land documents, under the custody of local government units:

“x x x To further implement the above mandates, the NGCP was also granted the right of eminent domain.

x x x

Given the foregoing mandates of NGCP under its franchise with the government, it is inevitable that some private properties may be affected by the transmission projects. It is thus necessary for NGCP to identify the current owners and possessors of the affected properties for its acquisition.

x x x

While the requested documents, such as the certificates of title and tax declarations, are the best proof of ownership and sufficient basis for inferring possession over a parcel of land, respectively, which means that the said documents shall significantly facilitate the identification of the current owners and possessors of the affected properties, there is a need to evaluate whether releasing actual copies of the same is proportional to the purpose of identification of owners/possessors.

NGCP should consider whether it may be reasonable and acceptable for the respective Register of Deeds, the Assessors’ Offices and the city or municipal planning offices of the affected LGUs to provide certifications/lists of names and contact details of the owners/possessors per official records instead, without necessarily releasing copies of the land documents.

This is in adherence to the principle of proportionality which requires that that the processing, which includes disclosure, of personal information must be limited only to the extent that is necessary to achieve the stated purpose and that there are no other effective means to achieve the same.

Nevertheless, we wish to emphasize that access to copies of the requested land documents may only be allowed if NGCP has duly justified and substantiated its lawful interest over the subject properties and that denial of said request shall cause NGCP’s failure to comply with its legal obligations under its franchise with the Philippine government. Such determination and assessment should be duly documented. And in this scenario, the respective Registry of Deeds, the Assessors’ Offices and the city or municipal planning offices may provide the requested documents to NGCP, relying on such evaluation vis-à-vis the NGCP’s mandate.

⁶ National Privacy Commission, NPC Advisory Opinion No. 2020-036 (Sept. 8, 2020).

We further reiterate that compliance with legal obligations and with provisions of other existing laws and regulations, as well as processing of sensitive personal information for the establishment or exercise of legal claims may be validly done and are not necessarily violations of the DPA. The provisions of applicable laws and regulations should be read together and harmonized with the DPA. x x x.” (underscoring supplied)

In a similar vein, there should be an evaluation if indeed the long list of documents that SMAI had identified are all relevant and necessary for its compliance with its various legal obligations, its establishment, exercise, or defense of legal claims, or as may be required under the RA No. 11506, taking into consideration that personal data shall be processed only if the purpose could not reasonably be fulfilled by other means.

Considering, however, that the grant of the power to expropriate private lands for purposes of acquiring and developing the sites for the Projects necessarily results in the obligations imposed by the Right-of-Way Act on implementing agencies now extending to SMAI, it is now said statutorily obliged to undertake the following:

1. Under Section 7 of the Right-of-Way Act, the determination of –
 - a. The classification and use for which the property is suited;
 - b. The development cost for improving the land,
 - c. The value declared by the owners;
 - d. The current selling price of similar lands in the vicinity;
 - e. The reasonable disturbance compensation for the removal and demolition of certain improvements on the land and for the value of improvements thereon;
 - f. The size, shape or location, tax declaration and zonal valuation of the land;
 - g. The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and,
 - h. Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

2. Under Sections 4, 5 and 6 of the Right-of-Way Act, the determination of –
 - a. The nature of and a detailed background on the properties that will be affected by a project’s alignment (for instance, whether such properties are “patent lands;” whether such properties are alienable and disposable; and whether such properties are currently the subject of litigation);
 - b. The identities of the current occupants or tenants of the aforesaid properties;
 - c. The identities of the owners, possessors, or claimants of the properties that will be affected by a project’s alignment, and whether the said persons are alive or dead or may be found;
 - d. The aforesaid persons’ marital status; the identity of their heirs; and the status of their estates if the owners or occupants are already deceased; and,
 - e. The payment of taxes and assessments on the properties or on the estate if the owner or occupant is already deceased.

From your letter, it was explained that the following documents are required to comply with the abovementioned statutory obligations and that these documents are the same ones required by agencies that customarily implement national infrastructure projects such the Department of Public Works and Highways and the Department of Transportation:

Government Agencies	Documents
Register of Deeds	<ul style="list-style-type: none"> • E-copy of title, including title trace-back up to Original Certificate of Title • Certification (if the office copy is on file or not for

Government Agencies	Documents
	administrative/judicial reconstitution purposes)
Provincial or Municipal or City Assessor's Office	<ul style="list-style-type: none"> • Certified true copy of tax declaration, including trace-back up to 30 years • Certificate of No Improvement • Tax map • Tax map rolls
Provincial or Municipal or City Treasurer's Office	<ul style="list-style-type: none"> • Realty Tax Clearance • RPT assessments
Business Permits and Licensing Office	<ul style="list-style-type: none"> • Assessment/s of Business Permit
Civil Registrar's Office	<ul style="list-style-type: none"> • Certificate of No Marriage (CENOMAR) • Marriage Certificate • Birth Certificate • Death Certificate
Department of Environment and Natural Resources and/or Bureau of Lands	<ul style="list-style-type: none"> • Cadastral map • Certification (alienable and disposable) • Lot Data Computation • Approved Survey Plan with technical description
Community Environment and Natural Resources Office	<ul style="list-style-type: none"> • Certification (lot status)
Land Registration Authority	<ul style="list-style-type: none"> • Certification (lot status)
Bureau of Internal Revenue	<ul style="list-style-type: none"> • Schedule of Recommended Zonal Value • Certificate Authorizing Registration • Taxpayer Identification Number • Certificate of Registration
Municipal Trial Court and/or Regional Trial Court	<ul style="list-style-type: none"> • Certification (No pending Case) • Decree of Annulment/Divorce/Legal Separation/Separation of properties/Pre-nuptial agreement • Copies of notarized documents
Department of Agrarian Reform	<ul style="list-style-type: none"> • Clearance • List of Registered Tenants • Certificate of Non-tenancy
Barangay	<ul style="list-style-type: none"> • Certification (Actual Possessor) • BARC Certification
Philippine Statistics Authority	<ul style="list-style-type: none"> • Certificate of No Marriage (CENOMAR) • Marriage Certificate • Birth Certificate • Death Certificate
National Archives Office	<ul style="list-style-type: none"> • Copies of notarized documents • Certification (if no record on file)
Securities and Exchange Commission and/or Department of Trade and Industry	<ul style="list-style-type: none"> • Certificate of Registration • Articles of Incorporation including amendments • By-laws including amendments • General information Sheet

Considering that all these documents being requested by SMAI are required to acquire land or expropriate the same under the Right-of-Way Act, and there is legitimate purpose for processing the same, it goes without saying that these documents are necessary and relevant in order for SMAI to be able to fulfill its mandate under the franchise provided by Congress. The DPA cannot be used by other government agencies to avoid fulfilling its obligation to provide SMAI the documents requested.

Finally, it is expected that SMAI shall ensure the implementation of organizational, physical, and technical security measures when it receives the requested documents and information and have mechanisms in place to enable the free exercise of data subject rights, where appropriate. We recommend that SMAI create its Privacy Manual or update the same accordingly, taking into consideration the above discussions.

We are mindful of the importance of the Projects and the positive impact it will have. The DPA is not meant to hinder legitimate proceedings. Rather, the law promotes fair, secure, and lawful processing of personal data.

This opinion is based solely on the limited information you have provided. Additional information may change the context of the inquiry and the appreciation of facts. This opinion does not adjudicate issues between parties nor impose any sanctions or award damages.

For your reference.

Very truly yours,

(Sgd.) IVY GRACE T. VILLASOTO
OIC - Director IV, Privacy Policy Office