



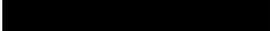
Republic of the Philippines
NATIONAL PRIVACY COMMISSION

**PRIVACY POLICY OFFICE
ADVISORY OPINION NO. 2021-028¹**

16 July 2021



**RE: DISCLOSURE OF PERSONAL INFORMATION OF TENANTS
BY A CONDOMINIUM CORPORATION TO THE BUREAU
OF INTERNAL REVENUE**

Dear 

We write in response to your email received by the National Privacy Commission (NPC) which sought clarification on whether a condominium corporation may validly refuse the request of the Bureau of Internal Revenue (BIR) to provide the list of tenants of the condominium.

In your letter, you disclosed that you are counsels for Andrea North Condominium Corporation (ANCC), incorporated to manage, administer, and operate the condominium project (Project). You further disclosed that as part of its duties, ANCC requires its unit owners to provide details about its tenants which includes personal information, government-issued identification (IDs) and contracts of lease. The purpose of such requirement is to validate the tenant-occupant's authority over the condominium unit/property.

We understand that ANCC recently received a letter from a BIR Revenue District Officer (RDO) requesting for a list of tenants of the Project. The BIR RDO also included in the letter a form, to be distributed to and filled out by all unit owners asking them to submit documents such as contracts to sell, statements of account/schedule of amortization, official receipts issued by the developer/seller for payments made and deeds of sale. The requested information will be used for BIR's Tax Verification Drive to enhance tax compliance and boost its tax collection efforts.

¹ Tags: Bureau of Internal Revenue; scope of the DPA; special cases.

You now ask for confirmation if ANCC's position to decline BIR RDO's request is appropriate. ANCC believes that providing the requested documents and information will be violative of the unit owners' and tenants' data privacy rights under the Data Privacy Act of 2012² (DPA) since the information were collected by ANCC for validation purposes only.

Scope of the DPA; special cases under the DPA

The DPA and its Implementing Rules and Regulations (IRR) provide for a list of specified information which do not fall within the scope of the law.³ In particular, information necessary to carry out functions of a public authority are considered special cases under the DPA, *to wit*:

"SECTION 5. Special Cases. The Act and these Rules shall not apply to the following specified information, only to the minimum extent of collection, access, used, disclosure or other processing necessary to the purpose, function, or authority concerned:

x x x

d. Information necessary in order to carry out the functions of public authority, in accordance with a constitutionally or statutorily mandated function pertaining to law enforcement or regulatory function, including the performance of the functions of the independent, central monetary authority, subject to restriction provided by law. Nothing in this Act shall be construed as having amended or repealed Republic Act No. 1405, otherwise known as the Secrecy of Bank Deposits Act; and Republic Act No. 9510, otherwise known as the Credit Information System Act (CISA);

x x x

Provided, that the non-applicability if 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."⁴ (Underscoring supplied)

The above exemption must be strictly construed. For the exemption to apply, the following are considered:

- The information is necessary in order to carry out the law enforcement or regulatory function of a public authority;
- The processing is for the fulfillment of a constitutional or statutory mandate;
- There is strict adherence to all due process requirements;
- Applies only to the minimum extent of collection, access, use, disclosure, or other processing necessary to the purpose, function, or activity concerned; and
- Only the specified information falls outside the scope of the DPA. The public authority, considered as a personal information controller under the DPA, must still comply with the other requirements of the DPA such as the implementation of reasonable and appropriate physical, organizational and technical security measures, uphold the rights of data subjects and adhere to the data privacy principles of

² An Act Protecting Individual Personal Information in Information and Communications Systems in the Government and 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 *Id.* § 4 (e) (2012).

⁴ Rules and Regulations Implementing the Data Privacy Act of 2012, Republic Act No. 10173, § 5 (d) (2016).

transparency, legitimate purpose, and proportionality.⁵

BIR mandate under the Tax Code, as amended; powers of the BIR Commissioner

We reiterate the discussions in NPC Advisory Opinion No. 2020-015 that the BIR's processing of personal data pursuant to its mandate falls under the special cases of the DPA.

The BIR is tasked to, among others, ensure compliance with the National Internal Revenue Code (NIRC), as amended, and other relevant tax laws and regulations. The DPA recognizes the authority of the BIR Commissioner under Section 5 of the NIRC to obtain information, and to summon, examine, and take testimony of persons in determining the liability of any person for any internal revenue tax or in collecting such liability or in evaluating tax compliance.

We likewise asked for clarification from the BIR National Office as to the propriety of such letter request from a BIR RDO and received the following reply:

"Please be advised that an "access to records letter" such as the one mentioned in your letter is authorized under Section 5(B) of the National Internal Revenue Code (NIRC) of 1997 as amended [Power of the Commissioner to Obtain Information, etc.].

Lastly, said letter being a mere request, there is no need yet for the issuance of a subpoena duces tecum (SDT). However, in the event that the condominium corporation fails to comply despite notices, the district office may request for the issuance of a SDT to compel compliance. x x x."

Hence, ANCC may provide the information requested by the BIR RDO pursuant to the agency's mandate. Submission of the same will not necessarily be violative of data privacy rights, given that the BIR has a lawful basis for requesting such information and has followed the appropriate processes for this Tax Verification Drive activity.

We reiterate that the DPA, its IRR and other relevant issuances of the NPC are not meant to impede the regular functions of government agencies based on their mandates.

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

⁵ See: National Privacy Commission, NPC Advisory Opinion No. 2019-022 (07 May 2019) and NPC Advisory Opinion No. 2020-015 (24 Feb 2020).