



Republic of the Philippines  
NATIONAL PRIVACY COMMISSION

**PRIVACY POLICY OFFICE  
ADVISORY OPINION NO. 2022-013<sup>1</sup>**

31 August 2022

[REDACTED]

**Re: ONLINE LENDING MOBILE APPLICATION PERSMISSIONS**

Dear [REDACTED],

We respond to your request for an Advisory Opinion on the compliance of your client's microloan mobile application with the Data Privacy Act of 2012 (DPA).<sup>2</sup>

We understand that your client, AND Financing Corporation (AND-FC), is a Philippine subsidiary of AND Global Pte of Singapore. AND-FC launched LendPinoy, a mobile application that provides microloans in the Philippines.

We note that LendPinoy will use an Artificial Intelligence (AI) credit scoring process to determine the creditworthiness of individual borrowers. To do this, LendPinoy intends to utilize two processes:

- 1) obtain access to SMS data of the would-be borrowers (data subjects); and
- 2) obtain access to the bank account details of the data subjects.

You thus seek clearance from the NPC on the foregoing processing of personal information.

*Advisory Opinion as guidance.*

At the outset, we wish to clarify that Advisory Opinions of the National Privacy Commission (NPC) do not serve as a "clearance" to the processing of personal information by personal

<sup>1</sup> Tags: lawful processing of personal information; consent; general data privacy principles; privacy impact assessment; privacy-by-design.

<sup>2</sup> 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).

information controllers (PICs).

As stated in NPC Circular No. 18-01 (Rules of Procedure on Requests for Advisory Opinions),<sup>3</sup> the NPC’s Advisory Opinions provide *guidance* to the requesting party and the general public on matters relating to the interpretation of the provisions of the [Data Privacy Act \(DPA\)](#) its Implementing Rules and Regulations (IRR), and NPC issuances, compliance requirements, enforcement of data privacy laws and regulations, and other related issuances on personal data privacy, security and protection.<sup>4</sup>

Nevertheless, we shall discuss hereunder certain matters we observed from your request.

*Application permissions; general data privacy principles; proportionality; retention; NPC Circular No. 20-01*

We note from the Privacy Impact Assessment on the SMS application (SMS PIA) that the following information will be processed within the application:

The program will collect, use, retain, disclose the following personal information.

	Personal Information	Y	N
1	Name	X	
2	Home Address	X	
3	Business Address	X	
4	Email Address	X	
5	Telephone Number - Mobile Number	X	
6	Telephone Number - Work	X	
7	Telephone Number - Home	X	
8	Age	X	
9	Date of Birth	X	
10	Marital Status	X	
11	Color, Race or Ethnic Origin	X	
12	Religion (Religious beliefs or affiliations)	X	
13	Education	X	
14	Photo	X	
15	Biometrics	X	
16	Political Association	X	
17	Philosophical Beliefs, Orientation	X	
18	Health	X	
19	Sexual life/preference/practice	X	
20	Offense committed or alleged to have been committed, the disposal of such proceedings, or the sentence of any court in such proceedings	X	
21	Issued by government agencies peculiar to an individual - unique identifiers (eg TIN, UMID ID no., Driver's License no., Passport no., GSIS, SSS numbers, Voter's registration no., etc.) - previous or current health records - licenses or its denials, suspension or its revocation - tax returns	X	
22	Specifically established by an executive order or an act of Congress to be kept classified	X	

Figure 1: Threshold Analysis SMS PIA

We likewise note from Section 1 of the SMS PIA on the Description of Program, Process, or Measure involving Personal Data, that once the data subjects accept the SMS permission, all saved SMS data in the device will be transferred to the AND-FC server securely.

We further note that in Section 3.2 on the Compliance with Information Privacy Principles, particularly the answers in relation to the questions on proportionality, that AND-FC answered in the negative to the following:

1. Is the processing of personal information adequate, relevant, suitable, necessary, and

<sup>3</sup> National Privacy Commission, Rules of Procedure on Requests for Advisory Opinions [NPC Circular No. 18-01] (10 September 2018).

<sup>4</sup> NPC Circular No. 18-01 Section 5 (a).

- not excessive in relation to a declared and specific purpose; and
2. Is personal information being processed because the purpose of the processing could not be reasonably fulfilled by other means?

From the foregoing, there seems to be a recognition on the part of AND-FC that the personal information to be processed is not proportional to the purpose of the processing and that there are other less intrusive means to determine creditworthiness of the data subjects.

Such processing, therefore, does not conform to the data privacy principle of proportionality which provides that the processing of personal data shall be adequate, relevant, suitable, necessary, and not excessive in relation to a declared and specified purpose; and personal data shall be processed only if the purpose of the processing could not reasonably be fulfilled by other less intrusive means.<sup>5</sup>

To comply with the said principle, AND-FC should evaluate the need to access and process SMS data of the data subjects as it may be disproportionate to the purpose of granting a loan to the data subjects.

Similarly, the harvesting of all SMS data of the data subjects appears to violate the principle of proportionality because this would entail the saving and transfer of the SMS data of the borrowers from the latter's mobile phones to the cloud servers of AND-FC and storing it there for a certain period. This processing activity may be deemed excessive and unrelated to the declared and specified purpose of determining the creditworthiness of data subjects.

We note that AND-FC intends to store the SMS data in its cloud servers not only for the purpose of credit-scoring<sup>6</sup> but also for the purpose of credit scoring system improvement.<sup>7</sup> The SMS data will also be disclosed to authorized personnel of AND-FC's parent company, AND Solutions PTE Ltd. to study and develop its credit scoring system<sup>8</sup>. These are additional purposes for the benefit of AND-FC that are neither essential nor necessary to the service sought to be availed of by the data subjects. In other words, processing for these purposes should be covered by a separate lawful basis.

We also note that the purpose of the request to access and harvest SMS data is to determine the creditworthiness of the data subjects and to possibly increase their credit limit. However, we also recognize that such SMS data may contain personal information, potentially including sensitive personal information, not only of the data subjects but also of third parties who have no connection to the loan agreement between AND-FC and the data subjects. As such, the data subjects to the loan agreement with AND-FC cannot give their consent for the third parties whose personal data may be in the SMS.

We further note that AND-FC intends to process SMS data that may contain *any* type of information<sup>9</sup>, which could include personal information and sensitive personal information, about the data subjects and third parties. We wish to point out that the legitimate interest of AND-FC and the borrower cannot serve as the basis for processing the data of third parties in this scenario since the right to privacy of the latter must prevail over the legitimate interest of

---

<sup>5</sup> Rules and Regulations Implementing the Data Privacy Act of 2012, Republic Act No. 10173, § 18 (c) (2016).

<sup>6</sup> See Table 3 – Information Flow – SMS Permission Privacy Impact Assessment

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> See Part 2 – Threshold Analysis, Table 2

AND-FC and the borrower.<sup>10</sup> Consequently, the potential borrower should not disclose the information of third parties to AND-FC.

On the other hand, we note from the Access to Online Banking Financial Information [one-time read-only access] PIA (Online Banking PIA), that two additional information will be processed, namely: online banking account details and online banking statement history.

Said collection is likewise for the purpose of determining the creditworthiness and whether to increase the credit limit of the data subjects. We reiterate our above discussions on proportionality on this matter.

We note from the Online Banking PIA that for the purpose of developing and improving the credit scoring system, products and services, information about data subjects may be anonymized.

We reiterate the discussions above that the additional purposes (*i.e.*, develop and improve credit-scoring systems) must have a separate lawful basis. Otherwise, AND-FC runs the risk of violating the DPA and the data privacy rights of the borrowers.

On anonymization, we wish to emphasize that information is considered anonymized if there are no possible means to identify the data subject. This means that the PIC and/or any other person are incapable of singling out an individual in a data set or from connecting two records within a data set (or between two separate data sets) and from any information in such dataset.<sup>11</sup>

Truly anonymized data, which cannot pinpoint or identify individuals, are not considered as personal data under the DPA. AND-FC may thus want to clarify its anonymization process.

Finally, if the purpose of requesting access is to determine creditworthiness, there may be a need to revisit the retention period, which at present is one (1) year for SMS data and two (2) years for online banking details.

If the purpose of processing for both the SMS and bank data is to determine the creditworthiness of a borrower, such purpose should be considered fulfilled once AND-FC decides on whether to grant a loan to the borrower. After such time, there is no more reason to retain the data and should consequently be disposed. AND-FC may refer to NPC Circular No. 20-01<sup>12</sup> for additional guidelines on the processing of personal data for loan-related transactions.

#### *Consent; transparency*

We note that AND-FC will rely on the consent of the data subjects in the processing of their SMS data and online banking details.

As defined, consent refers to any freely given, specific, informed indication of will, whereby

---

<sup>10</sup> Data Privacy Act of 2012, § 12 (f).

<sup>11</sup> Article 29 Data Protection Working Party, Opinion 05/2014 on Anonymisation Techniques, 10 April 2014, §2.1 – Definition in the EU legal context

<sup>12</sup> National Privacy Commission, Guidelines on the Processing of Personal Data for Loan-Related Transactions [NPC Circular No. 20-01] 14 September 2020

the data subject agrees to the collection and processing of personal information about and/or relating to him or her. Consent shall be evidenced by written, electronic or recorded means. It may also be given on behalf of the data subject by an agent specifically authorized by the data subject to do so.<sup>13</sup>

This relates to the obligation of AND-FC to inform the data subjects of the nature, extent, and purpose of the processing being done in relation to the declared specific purpose, their rights under the DPA, and the security measures being implemented by to protect their personal information. AND-FC shall also inform the data subjects about the consequences of granting or not granting permissions.

In the case of JVA vs UPESO,<sup>14</sup> the NPC ruled that:

“The test to determine if the personal information controller has complied with the general privacy principle of transparency is to examine **whether an average member of the target audience could have understood the information provided to them**. This does not, however, mean that the requirement to use clear and plain language necessitates using layman’s terms in place of technical words at the risk of not capturing the complex concepts they represent. Rather, this requirement means that the information required under Sections 18(a) and 34(a)(2) of the Implementing Rules and Regulations should be provided in as simple a manner as possible, avoiding sentence or language structures that are complex. The information provided should be concrete and definitive; it should not be phrased in “abstract or ambivalent terms or leave room for different interpretations. x x x ” (emphasis supplied)

Thus, a valid consent may only be obtained from the data subject if the latter had been duly informed of the abovementioned information in a manner that gives them a real choice whether to allow or deny access to their SMS data and/or online banking details.

We suggest revisiting your consent forms to ensure that consent is freely given by the data subjects and that they have been duly informed of all their rights as well as consequences in giving their consent. In addition, we suggest having separate consent options for the other processing activities enumerated in the PIAs that are not essential to provide the service or product sought to be availed of by the data subject. This would give the data subjects a choice to participate in the use of their personal data for the purpose of improving the credit-scoring system of AND-FC and enable them to avoid having to sign off on the entire processing activities, particularly those activities that are not related to the purpose of securing a loan.

We reiterate, however that even if data subjects consent to the processing of their personal information, their consent does not constitute a waiver of the principle of proportionality. Thus, even if AND-FC complies with all the requisites of consent but fails to address the issues mentioned above, the processing may still be considered invalid.

### *Privacy by design*

In addition to the conduct of the PIA, it is recommended that AND-FC incorporate privacy by design principles in the development of the mobile loan application. Privacy by design is an approach that ensures that privacy and data protection have been considered during the

---

<sup>13</sup> Data Privacy Act of 2012, § 3 (b).

<sup>14</sup> National Privacy Commission, JVA vs UPESO [NPC Case No. 19-498] 9 June 2020

design phase of a system, project, program, and process and will continue to be taken into account throughout its lifecycle and implementation.<sup>15</sup>

We note that AND-FC acknowledged in the PIA that the processing activities are not proportional to the purpose stated. This notwithstanding, AND-FC did not propose measures to address these issues and, instead, sought clearance through an Advisory Opinion to process personal information. Incorporating privacy by design in the development of a revised process and data flow system may guide AND-FC in properly addressing the privacy risks identified in the PIA.

Please be advised that this Advisory Opinion was rendered based solely on the information you have provided. Any extraneous fact that may be subsequently furnished us may affect our present position. Please note further that our Advisory Opinion is not intended to adjudicate the rights and obligations of the parties involved.

Please be guided accordingly.

Very truly yours,

**(SGD.) FRANKLIN ANTHONY M. TABAQUIN, IV**  
Director IV, Privacy Policy Office

---

<sup>15</sup> See generally: Cavoukian, Ann Ph.D., Privacy by Design - The 7 Foundational Principles - Implementation and Mapping of Fair Information Practices, available at [https://iapp.org/media/pdf/resource\\_center/pbd\\_implement\\_7found\\_principles.pdf](https://iapp.org/media/pdf/resource_center/pbd_implement_7found_principles.pdf) (last accessed 21 Oct 2021).