



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

PRIVACY POLICY OFFICE
ADVISORY OPINION NO. 2023-014¹

21 June 2023

[REDACTED]

**RE: TRANSFER OF PERSONAL DATA AMONG PERSONAL
INFORMATION CONTROLLERS**

Dear [REDACTED]

We respectfully provide you with our Advisory Opinion on your query raising several privacy concerns regarding the transfer of personal data of your customers to a local electric cooperative.

You inform that your company is a third-party power generation and distribution company with clientele located in isolated areas in the Philippines. We understand that your company intends to transfer its power distribution rights to a local electric cooperative in one of your sites. However, there remain unpaid charges from some of your customers. Thus, you requested the local electric cooperative to collect the unpaid charges on your company's behalf, but this necessitates the disclosure of your list of customers including their addresses and contact details to the local electric cooperative.

Thus, you ask the following:

1. How can your company disclose customer information to its local partner for collection payables without violating the DPA or any NPC issuance?
2. Does the transfer of your company's rights as power distributor free it of its obligations towards its customers as data subjects?

¹Lawful Processing; Contractual Obligation; Legitimate Interest; Accountability.
Ref No.: PRD-23-00190

Personal information; lawful processing of personal data – contractual obligation; legitimate interest.

Your company's intended action of transferring its client list to the new local distributor qualifies as "processing" under the Data Privacy Act (DPA).² On the other hand, the information in your client list (which consists of your clients' names, addresses, and contact details) is classified as personal information under the law.³ Hence, the processing of your company's client list should therefore be supported by the appropriate basis under the DPA.

The collection of unpaid charges from delinquent customers can be considered as lawful processing of personal information for the purpose of the fulfillment of a contract with the data subject pursuant to Sec. 12 (b) of the DPA. Your intended processing also finds basis under Sec. 12 (f) of the DPA, since both your company and the local electric cooperative have a legitimate interest to ensure that all unpaid accounts and charges are fully settled. As such, your company can provide the local electric cooperative with the list of delinquent customers for proper collection and payment even without the execution of a Data Sharing Agreement (DSA). As provided in Section 8 of NPC Circular 2020-03, the execution of a DSA is no longer mandatory, and the parties may resort to other contractual schemes containing the terms and conditions of the sharing arrangement. Nevertheless, the execution of a DSA is considered as a best practice and a demonstration of accountability by the personal information controllers.

Privacy Notice; Data Privacy Principle of Transparency.

Since the execution of a DSA is not required in this particular case, a privacy notice to your customers may suffice if there will be no change as to the purpose of the personal data collected.

Nevertheless, your company should still observe the data privacy principle of transparency. The principle of transparency requires that data subjects must be aware of the nature, purpose, and extent of the processing of his or her personal data, including the risks and safeguards involved, the identity of personal information controller, his or her rights as a data subject, and how these can be exercised. Any information and communication relating to the processing of personal data should be easy to access and understand, using clear and plain language.⁴

Applying the foregoing to your concern, the privacy notice must indicate what type of personal data will be processed, the purpose for processing (*e.g.*, the transfer of distribution rights and collection of unpaid or pending charges), the Data Subject's rights, and the channels by which to exercise it whenever applicable. We also recommend that these notices be sent individually to the customers concerned for proper dissemination and information.

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 Id. §3 (g).

⁴ Id. §18 (a)

Accountability of PICs to data subjects.

On your query as to whether your company is free from liability towards the data subjects by the transfer of rights to the local cooperative, we refer you to the principle of accountability under Sec.21 of the DPA's IRR, *to wit*:

SEC. 21. Principle of Accountability. – Each personal information controller is responsible for personal information under its control or custody, including information that have been transferred to a third party for processing, whether domestically or internationally, subject to cross-border arrangement and cooperation.

(a) The personal information controller is accountable for complying with the requirements of this Act and shall use contractual or other reasonable means to provide a comparable level of protection while the information are being processed by a third party.

(b) The personal information controller shall designate an individual or individuals who are accountable for the organization's compliance with this Act. The identity of the individual(s) so designated shall be made known to any data subject upon request.⁵

Hence, your company remains to be a PIC if it retains the personal data of its customers and, consequently, remains accountable to the latter.

In connection with the foregoing, please note that the DPA allows retention of personal data only for as long as necessary for the fulfillment of purposes for which the data was obtained or for the establishment, exercise, or defense of legal claims, or for legitimate business purposes, or as provided by law.⁶

Some of the factors that may be considered by a PIC in determining retention periods of personal data include but are not limited to:

- (1) legal requirements which the company may be subject to;
- (2) applicable prescription periods in existing laws; and
- (3) industry standards, and other laws and regulations that apply to the sector.⁷

Thus, both your company and the local electric cooperative are considered as PICs with respect to the personal data of the customers. Both entities are therefore expected to be accountable for the personal data it processes to the end that the data subjects are protected from harm and other privacy risks.

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

⁵ Id. § 21.

⁶ Id. §11 (e)

⁷ National Privacy Commission, NPC Advisory Opinion No. 2017-24 (21 June 2017).

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Very truly yours,

(Sgd.)

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