

The Data Privacy Act of 2012 and Freedom of Information: A Balancing of Rights

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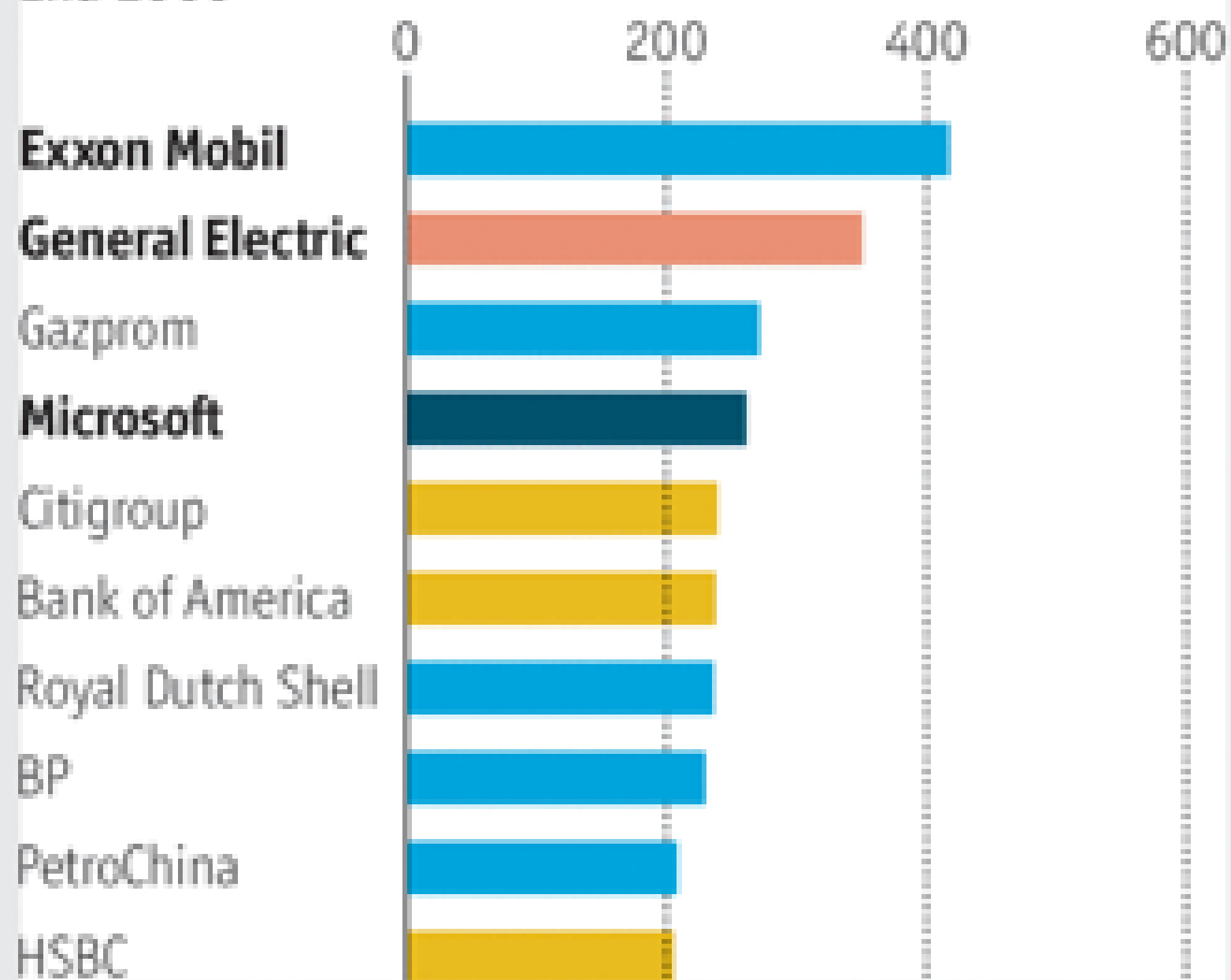
**NATIONAL
PRIVACY
COMMISSION**

A virtually new world

World, largest listed companies by market capitalisation, \$bn

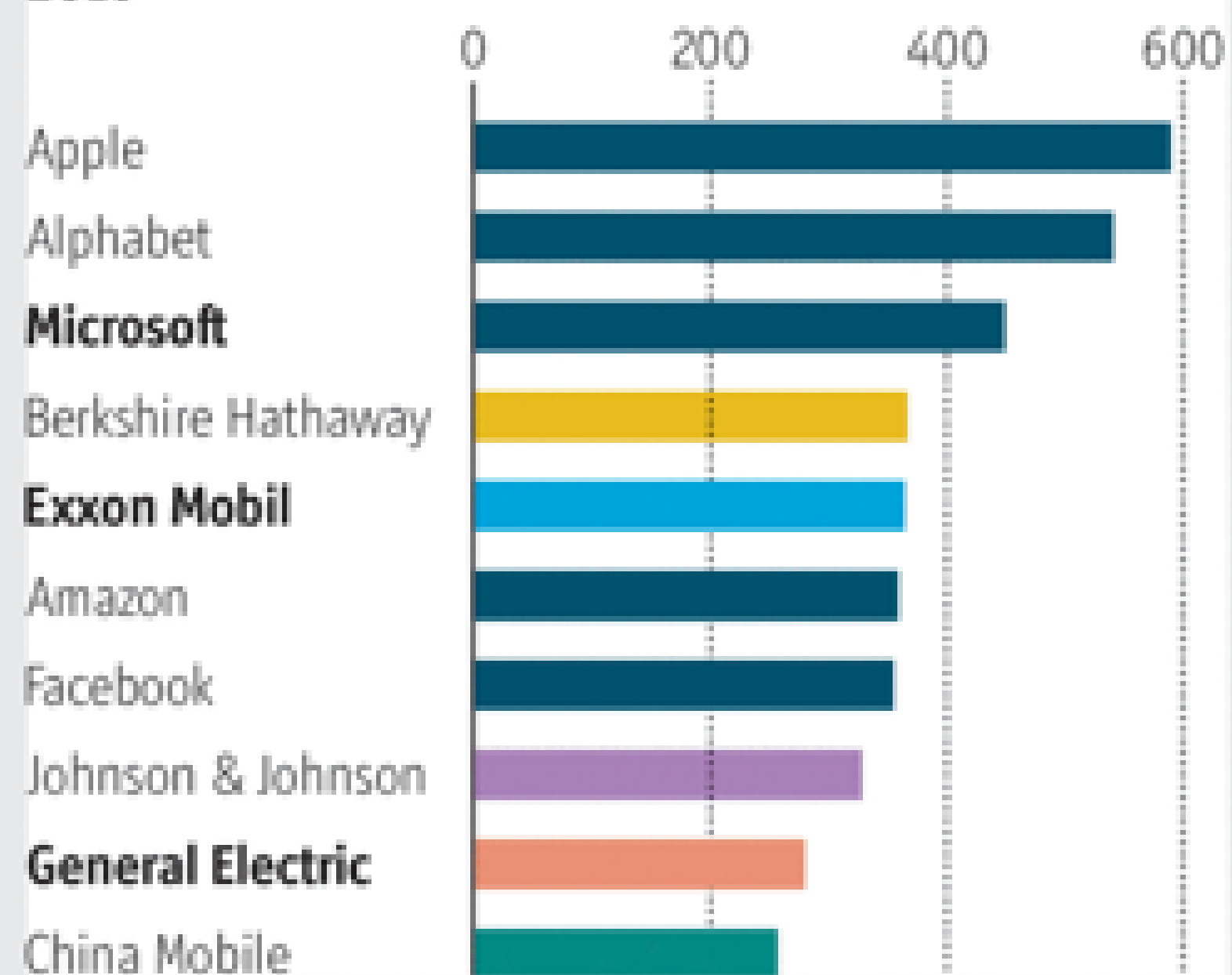
Sector: ■ Energy ■ Financials ■ Health care ■ Industrials ■ IT ■ Telecoms

End 2006



Source: Bloomberg

2016*



*At August 24th 2016

THE WORLD OF DATA

NUMBER
OF EMAILS
SENT
EVERY SECOND

2.9

MILLION

DATA
CONSUMED BY
HOUSEHOLDS
EACH DAY

375

MEGABYTES

VIDEO
UPLOADED TO
YOUTUBE EVERY
MINUTE

20

HOURS

DATA PER
DAY
PROCESSED
BY GOOGLE

24

PETABYTES

TWEETS
PER
DAY

50

MILLION

TOTAL MINUTES
SPENT ON
FACEBOOK
EACH MONTH

700

BILLION

DATA SENT
AND RECEIVED
BY MOBILE
INTERNET USERS

1.3

EXABYTES

PRODUCTS
ORDERED ON
AMAZON PER
SECOND

72.9

ITEMS



IN THE 21ST CENTURY, we live a large part of our lives online. Almost everything we do is reduced to bits and sent through cables around the world at light speed. But just how much data are we generating? This is a look at just some of the massive amounts of information that human beings create every single day.

SOURCES: Cisco, comScore, MapR, Reuters, Audiocast, Google, Twitter, YouTube

A COLLABORATION BETWEEN GOOD AND OLIVER MUNDAY

IN PARTNERSHIP WITH IBM

R.A. 10173: The Data Privacy Act of 2012

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



“ It is the policy of the State to protect the fundamental human **right of privacy of communication** while ensuring **free flow of information** to promote innovation and growth. ”



Right to Privacy

The “right to be **let alone**”

The individual’s ability to **control the flow of information** concerning or describing him, which however must be overbalanced by legitimate public concerns

Free Flow of Information

Freedom of the Press

Research

Right to Information or **Freedom of Information**

Scope of the DPA

Except for certain special cases provided by the law, it applies to the processing of all types of personal information and to any natural and juridical person involved in processing in the Philippines



Processing

Refers to **any operation or any set of operations performed upon personal information** including, but not limited to the following:



- ✓ Collection
- ✓ Recording
- ✓ Organization
- ✓ Storage
- ✓ Updating or modification
 - ✓ Retrieval
 - ✓ Use
- ✓ Consolidation
- ✓ Blocking
- ✓ Erasure
- ✓ Destruction
- ✓ Consultation

Data Subject

an **individual** whose personal, sensitive personal, or privileged information is processed

Personal Information Controller

controls the processing of personal data, or instructs another to process personal data on its behalf

Personal Information Processor

any natural or juridical person to whom a PIC may **outsource or instruct** the processing of personal data



Personal Information

Any information, whether recorded in a material form or not,

- ✓ from which the **identity of an individual is apparent or can be reasonably and directly ascertained** by the entity holding the information, or
- ✓ when put together with other information **would directly and certainly identify an individual.**

Personal Sensitive Information

- ✓ Race, ethnic origin, **marital status, age**, color, and religious, philosophical or political affiliations
- ✓ **Health, education**, genetic or sexual life of a person, or to any proceeding for any offense committed or alleged to have been committed by such person, the disposal of such proceedings, or the sentence of any court in such proceedings
- ✓ **Issued by government agencies** peculiar to an individual (social security numbers, health records, licenses or its denials, suspension or revocation, and tax returns)
- ✓ Specifically **established by law** to be kept classified

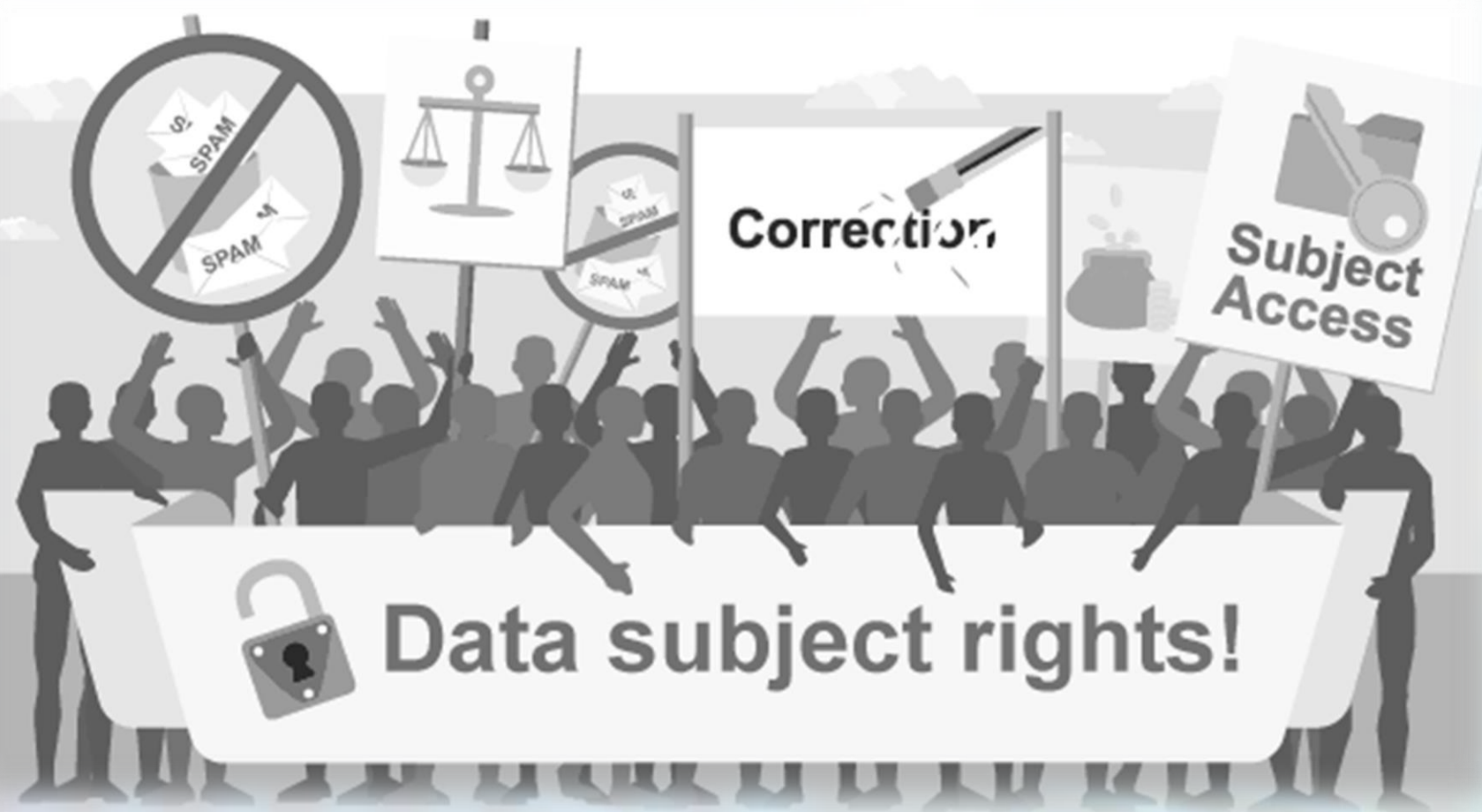


Privileged Information

- ✓ any and all forms of data, which, under the Rules of Court and other pertinent laws **constitute privileged communication**
- ✓ Husband-Wife
- ✓ Lawyer-Client
- ✓ Doctor-Patient
- ✓ Priest Penitent
- ✓ Executive Privilege

Rights of a Data Subject

- ✓ Right to **Information**
- ✓ Right to **Object**
- ✓ Right to **Access**
- ✓ Right to **Correct**
- ✓ Right to **Erase**
- ✓ Right to **Data Portability**
- ✓ Right to **Damages**
- ✓ Right to **File a Complaint**



General Principles of Data Privacy

Transparency

- ✓ The data subject must be aware of the **nature, purpose, and extent** of the processing of his or her personal data.

Legitimate Purpose

- ✓ The processing of information shall be compatible with a **declared and specified purpose** which must not be contrary to law, morals, or public policy.

Proportionality

- ✓ The processing of information shall be **adequate, relevant, suitable, necessary, and not excessive** in relation to a declared and specified purpose.



Special Cases

1. Information about an **individual who is/was an officer or employee of a government institution** that relates to his position/functions;
2. Information about an individual who is/was **performing a service under contract for a government institution** that relates to the services;
3. Information relating to a **discretionary benefit of a financial nature**, such as a license or permit;
4. Personal information processed **for journalistic, artistic, or literary purposes** in order to uphold freedom of speech, expression or of the press;
5. Personal information processed for **research purpose intended for a public benefit**;
6. Information necessary to **carry out functions of public authority** in accordance with a constitutionally or statutorily mandated function pertaining to law enforcement or regulatory function;
7. Information necessary for **banks and financial institutions**; and
8. Personal information **originally collected from residents of foreign jurisdictions** in accordance with their data privacy laws.

Punishable Act	Imprisonment		Fine	
	PI	SPI	PI	SPI
Unauthorized processing (without consent of the data subject or without being authorized by law)	1Y-3Y	3Y-6Y	500K-2M	500K-4M
Access due to negligence (provided access to without being authorized by law)	1Y-3Y	3Y-6Y	500K-2M	500K-4M
Improper disposal (knowingly or negligently dispose, discard, or abandon the personal information in an area accessible to the public or otherwise placed the personal information for trash collection)	6M-2Y	3Y-6Y	100K-500K	100K-1M
Unauthorized purposes	18M-5Y	2Y-7Y	500K-1M	500K-2M

Punishable Act	Imprisonment		Fine	
	PI	SPI	PI	SPI
Intentional breach (knowingly and unlawfully, or violating data confidentiality and security data systems, breaks in any way into any system where personal and sensitive personal information are stored)	1Y-3Y		500K-2M	
Concealing breach (intentionally or by omission conceals the fact of breach)	18M-5Y		500K-1M	
Malicious disclosure (with malice/in bad faith, discloses unwarranted or false information)	18M-5Y		500K-1M	
Unauthorized disclosure (discloses to a third party personal information not covered by the immediately preceding section without consent)	1Y-3Y	3Y-5Y	500K-1M	500K-2M
Combination of acts	3Y-6Y		1M-5M	

Harmonizing the Data Privacy Act and **the Right to Information**



Right to Information

(E.O. No. 2, Series of 2016)

- ✓ **Right of an individual to access** information held by the government
- ✓ **Information**, official records, public records and documents and papers relating to official acts, transactions, decisions, and government research data used for policy development
- ✓ **Exceptions**: Executive privilege; National security, defense or international relations; Law enforcement and protection of public and personal safety; Protection of minors, victims or accused; Official confidential information, documents or records government agencies, tribunals, boards or officers; Prejudicial premature disclosure; Proceedings treated by law or regulations as confidential and privileged; Confidential banking/finance matters; and Others under law, jurisprudence, rules and regulations

Right to Data Privacy


(Data Privacy Act of 2012)

- ✓ **Right of an individual to control** the collection of, access to, and use of personal information about him or her that are under the custody of the government or private parties
- ✓ **Personal information**, sensitive personal information, privileged information
- ✓ **Special cases**: Information about an officer or employee of a government institution that relates to the position/functions; performing service under contract for government that relates to the services; discretionary benefit of a financial nature; journalistic, artistic, literary or research purposes; necessary to carry out functions of public authority; necessary for banks and financial institutions; originally collected from residents of foreign jurisdictions in accordance with their data privacy laws



Rule of Thumb

- ✓ Upon getting an FOI request for a document which contains personal information, check whether the purpose stated by the requestor is not contrary to law, morals, public policy and public order.
- ✓ Next, check whether the same may be disclosed under E.O. 2, s. 2016, the law, including the Data Privacy Act of 2012 and other NPC issuances, other rules and regulations issued by government agencies and regulators, and jurisprudence.
- ✓ Disclose what is only allowed, necessary and relative to the purpose stated.
- ✓ **EXAMPLE #1: Birth Certificates** (The Child and Youth Welfare Code - Presidential Decree No. 603)
 - ✓ **Article 7. Non-disclosure of Birth Records. - The records of a person's birth shall be kept strictly confidential and no information relating thereto shall be issued except on the request of any of the following:**
 - 1) The person himself, or any person authorized by him;
 - 2) His spouse, his parent or parents, his direct descendants, or the guardian or institution legally in-charge of him if he is a minor;
 - 3) The court or proper public official whenever absolutely necessary in administrative, judicial or other official proceedings to determine the identity of the child's parents or other circumstances surrounding his birth; and
 - 4) In case of the person's death, the nearest of kin.

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- ✓ **EXAMPLE #2: Access to Personal Data Sheet of Government Personnel** (NPC Advisory No. 2017-02)
 - ✓ Under the DPA, only those that **relate to the position or function of the individual working for the government** may be made available to the public.
 - ✓ Personal data may be released *ONLY* if necessary to the declared, specified and legitimate purpose of the requesting party.
 - ✓ Upon a request, the government agency must consider the following:
 - ✓ The information requested falls under matters of public concern;
 - ✓ The individual requesting has a declared and specified purpose for the request;
 - ✓ The declared and specified purpose is not contrary to law, morals and public policy;
 - ✓ The requested personal information is necessary to the purpose.

In all cases, the rights of the data subject should be respected, including the right to be informed or notified about the processing of his or her personal.



Contact us



NATIONAL
PRIVACY
COMMISSION

For invitations: (02)565-9623

For complaints: (02)517-7806

For compliance: (02)517-7810

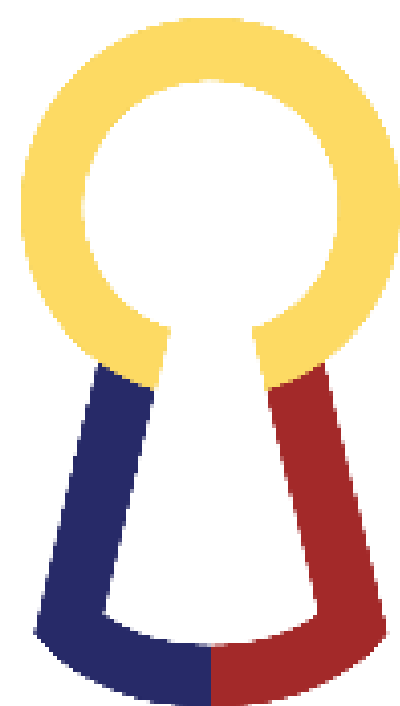
For public assistance: 09451534299 |
09399638715

or

Email us at
info@privacy.gov.ph

Privacy

Thank you!



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