

Data Sharing

NPC Circular No. 2020-03

First National Convention on Civil Registration
and Vital Statistics (1NCCRVS)

Data Sharing

Sharing, disclosure, or transfer to a third party of personal data under the custody of a personal information controller (PIC) to one or more other PICs



Data Sharing Agreement

- contract, joint issuance, or any similar document
- sets out the obligations, responsibilities, and liabilities of the PLCs involved in the transfer of personal data
- includes the implementation of safeguards and upholding data subject rights



**Is compliance
with other laws
requiring
submission/
sharing of
personal data a
violation of the
Data Privacy Act
of 2012?**

No.

The Data Privacy Act of 2012 (DPA):

- ✓ Has the twin task of protecting the right to privacy while ensuring the free flow of information
- ✓ Should be read together with existing laws
- ✓ Not meant to prevent government from processing personal data when necessary to fulfill their mandates



What are the possible lawful criteria for data sharing under the DPA?

Section 12

- ☐ Consent
 - ☐ Contract
 - ☐ Compliance with a legal obligation
 - ☐ Protect vital interests of the data subject, including life and health
 - ☐ National emergency, public order and safety, or fulfill functions of a public authority
 - ☐ Legitimate interests (private sector only)
-

Section 13

- ☐ Consent
- ☐ Existing law and regulation
- ☐ Protection of life and health
- ☐ Public organizations
- ☐ Medical treatment
- ☐ Lawful rights and interests in court proceedings, establishment/exercise/defense of legal claims, and when provided to govt.

Can we also share personal data under a special case?

Yes.

- ✓ Data sharing may also be allowed pursuant to Section 4 of the DPA which specifies the special cases.
- ✓ But such data sharing should only be:
 - ❑ to the minimum extent necessary;
 - ❑ to achieve the specific purpose, function, or activity; and
 - ❑ subject to the requirements of applicable laws, regulations, or ethical standards. (Sec. 7, NPC Circular No. 2020-03)

Can we also share personal data under a special case?

Yes.

Special cases are personal data:

- ☐ that falls within **matters of public concern**;
- ☐ processed for **journalistic, artistic or literary purpose**;
- ☐ processed for **research purpose**;
- ☐ necessary in order to carry out the functions of **public authority**;
- ☐ necessary for **banks, other financial institutions** under the jurisdiction of the BSP, and other bodies authorized by law, to the extent necessary to comply with applicable laws; and
- ☐ **originally collected from residents of foreign jurisdictions** in accordance with the laws of those foreign jurisdictions which is being processed in the Philippines.

In what instances do we need consent of the data subject?

When consent is:

- ✓ required by law/regulation; or
- ✓ the most appropriate lawful basis.



Do not obtain consent if the same is not appropriate in relation to the purpose of processing – especially in instances where you are already aware that processing will continue despite the withdrawal of consent because some other lawful basis is relied on.

**How much
personal data
can we
collect/share?**

It depends.

Always consider PROPORTIONALITY vis-à-vis LEGITIMATE PURPOSE



Do we always have to execute a data sharing agreement (DSA) for all sharing arrangements?

No.

- ✓ The execution of a DSA is:
 - ❑ a sound recourse
 - ❑ demonstrates accountable processing and good faith in complying with the requirements of the law
- ✓ The NPC shall take this into account:
 - ❑ where a complaint is filed pertaining to such data sharing and/or during any investigation
 - ❑ in the conduct of compliance checks.
- ✓ DSAs need not be reviewed/approved by the NPC.

Sample DSA

DATA SHARING AGREEMENT

This Data Sharing Agreement, ("AGREEMENT"), made and entered into this ____ day of _____, by and between:

GOVERNMENT AGENCY ("FIRST PARTY"), a government agency created and existing under the laws of the Republic of the Philippines, with principal office address at _____, herein represented by _____ in his/her capacity as _____;

and

GOVERNMENT AGENCY ("SECOND PARTY"), a government agency created and existing under the laws of the Republic of the Philippines, with principal office address at _____, herein represented by _____ in his/her capacity as _____.

WHEREAS, FIRST PARTY is (indicate the identity, and mandate of the first party.)

WHEREAS, SECOND PARTY is (indicate the identity, and mandate of the second party.)

WHEREAS, (indicate purpose, i.e., a specific public function or public service)

WHEREAS, (indicate the objectives of the data sharing, i.e., possible reference to Philippine Development Plan, other strategic objectives/goals of the government, etc.)

WHEREAS, (other clauses as the parties may require)

NOW THEREFORE, for and inconsideration of the above premises, the PARTIES hereby agree as follows:

I. DEFINITION OF TERMS. (if necessary)

II. PURPOSE. First Party hereby grants access to Second Party to the Personal Data described hereunder to facilitate the sharing or transfer of personal data from one Party to another for the following purposes:

a. (Identify MAIN PURPOSE)

b. (Identify the public function or public service, the performance of which the Agreement is meant to facilitate)

c. (Indicate lawful basis for processing/sharing/disclosing personal data, i.e., pursuant to a particular law, etc.)

III. DESCRIPTION OF DATA. First Party shall share to the Second Party the following personal data: (Indicate type/s of personal data to be shared – personal information, sensitive personal information; list SPECIFIC details of personal data to be shared or provide in an Annexure)

a. (Name, contact number, etc.)

b. (Specific documents/certificates/etc.)

(Indicate whether the personal data processing will be outsourced, including the types of processing EUX or service providers will be allowed to perform)

(Indicate method/s to be used for the processing of personal data.)

IV. OPERATIONAL DETAILS. The Second Party shall process the personal data received specifically for the purpose stated herein. The First Party reserves the right to provide conditions or additional instructions to the Second Party in relation to the transfer, storage, access, use or destruction of personal shared.

DATA SHARING AGREEMENT

(Indicate an overview of the operational details of the data sharing - how the sharing/transfer will be accomplished, including the procedure the parties intend to observe in implementing the same; may be provided in an Annexure)

(If the recipient will be allowed to disclose the shared data or grant public access:

- Justification for allowing access
- Parties that are granted access
- Types of personal data that are made accessible
- Estimated frequency and volume of such access
- Program, middleware, and encryption method that will be used where disclosure or public access is facilitated by an online platform)

V. SECURITY MEASURES. The Parties shall ensure that there are reasonable and appropriate organizational, technical, and physical security measures in place for data privacy and security.

(Provide description of the safeguards/security measures, i.e., encryption (AES-256), authentication, backup, access controls, security clearances, etc.)

(Provide process for data breach management) [May refer to NPC Circular 16-03 for guidance]

VI. RESPONSIBILITY OF THE PARTIES.

a. The First Party shall:

i. (Description of the respective obligations/responsibilities of the party)

ii.

iii.

b. The Second Party shall:

i. (Description of the respective obligations/responsibilities of the party)

ii.

iii.

All Parties shall comply with the provisions of the Data Privacy Act of 2012, its Implementing Rules and Regulations, and all applicable issuances of the National Privacy Commission, including adherence to the general data privacy principles, putting in place adequate safeguards for data privacy and security, and upholding of data subjects' rights, among others.

The designated Data Protection Officers of the Parties are as follows:

Name of Agency: _____ Name of DPO, Designation _____

Name of Agency: _____ Name of DPO, Designation _____

They shall be accountable for ensuring compliance with the abovementioned laws and regulations.

VII. DATA SUBJECTS' RIGHTS. (Provide for mechanisms that allow affected data subjects to exercise their rights relative to their personal data, including:

Identity of the party or parties responsible for addressing information requests, complaints filed by a data subject, and/or any investigation by the NPC

Indicate procedure by which a data subject can access or obtain a copy of the Agreement –

[Note that parties may redact or prevent the disclosure of trade or industrial secrets, confidential and proprietary business information, and any other detail or information that could endanger or compromise their information

Security

Data subject rights

Retention/disposal

Accountability

systems, or expose to harm the confidentiality, integrity, or availability of personal data under their control or custody]

VIII. RETENTION AND DATA DISPOSAL. Unless otherwise provided by this Agreement, ALL personal data shared by the Parties by virtue of this Agreement shall be securely (returned, destroyed, or disposed off) upon the termination of this Agreement.

(Identify rules for the retention of shared data.)

(Method that will be adopted for the secure return, destruction, or disposal, and timeline.)

IX. TERM. This Agreement will commence upon the signing thereof and shall remain in full force for _____ years thereafter unless otherwise revoked, terminated, or modified for cause by any of the parties with prior written notice to the other party, and is subject to renewal upon agreement of the parties;

X. SEPARABILITY CLAUSE. The provisions of this Agreement are declared as separable and in the event that any of its provisions are declared null and void in accordance with the constitution, relevant laws and implementing rules and regulations, the validity of other provisions shall not be affected thereby;

XI. NON-DISCLOSURE. The Parties undertake to preserve the confidentiality of this Agreement and all relevant shared information. The terms and conditions, and shared information involved in the implementation of this Agreement are confidential among the parties and shall not be disclosed to anyone else except as shall be necessary to effectuate its terms. Any disclosure in violation of this section shall be deemed a material violation of this Agreement.

If any of the Parties is required by applicable law or legal process to disclose confidential information, such Party shall provide the other concerned Parties with prompt notice. Disclosures that are required by applicable law or legal process shall not be considered violation of this Agreement.

The non-disclosure obligation shall survive the termination or expiration of this Agreement

XII. DISPUTE RESOLUTION. All disputes, controversies or claims arising out of or relating to this Agreement, or about its breach, termination or invalidity shall be settled through negotiation and/or mediation within _____ days from receipt of a written notice by all the parties from the injured party. The parties shall attempt in good faith to settle such dispute by mutual discussions between them.

Failure to resolve the matter, the same shall then be submitted to the Office of the Secretary of Justice for resolution/arbitration pursuant to the provisions of Sections 66, 67, 68, 70 and 71, Chapter 14, Book IV, Title III of Executive Order No. 292 (Administrative Code of 1987) in relation to Presidential Decree No. 242 (Prescribing the Procedure for the Administrative Settlement of Claims and Controversies Between or Among Government Offices, Agencies and Instrumentalities including Government-Owned-and-Controlled Corporations and for other Purposes).

XIII. AMENDMENTS. Any modification of this Agreement will not be valid unless there is a written concurrence of ALL PARTIES.

Purpose

Personal data

Parties

Term

Operational details

IN WITNESS WHEREOF, the Parties hereto have affixed their respective signatures this ____ day of _____ in _____ Philippines.

Name Position Name of Agency	Name Position Name of Agency
WITNESSES:	
DPO, Name of Agency	DPO, Name of Agency

ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES)
_____) S.S.

BEFORE ME, this _____ day of _____, 2020, appeared the following persons, showing to me their respective competent proofs to identify to wit:

NAME	GOV'T I.D. NOS.	DATE/PLACE ISSUED

Known to me to be the same persons who executed the foregoing Memorandum of Agreement and acknowledged that the same is their voluntary act and deed and that of the corporation(s) being represented.

This document consists of _____ pages, including this acknowledgement page.

WITNESS MY HAND AND NOTARIAL SEAL at the place and date above written.

NOTARY PUBLIC

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of 2021.

Thank you!

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