



Republic of the Philippines  
NATIONAL PRIVACY COMMISSION

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**PRIVACY POLICY OFFICE  
ADVISORY OPINION NO. 2021-045<sup>1</sup>**

29 December 2021

[REDACTED]

**Re: ACCESS TO SUBSCRIBER RECORDS FOR INTERNAL  
REVENUE TAX PURPOSES**

Dear [REDACTED]

We write in response to your letter requesting for an Advisory Opinion received by the National Privacy Commission (NPC or the Commission) on the legality of providing the Bureau of Internal Revenue (BIR) subscriber records of certain individuals in view of the provisions of the Data Privacy Act of 2012<sup>2</sup> (DPA).

We understand that the BIR, through its Regional Director for Revenue Region No. 8A- Makati City, sent a letter dated 16 September 2021 (BIR letter), requesting Globe Telecom, Inc. (Globe) to allow the attorneys of its Regional Investigation Division access to the records of and/or be furnished with the registered addresses of 782 persons enumerated in Annex A of the same. The BIR further stated that the request is made pursuant to Section 5 (b) of the National Internal Revenue Code (NIRC), as amended, and in consonance with Revenue Memorandum Circular (RMC) No. 97-2021, otherwise known as "Taxation of Any Income Received by Social Media Influencers."

Furthermore, in the copy of the letter provided to the Commission, the BIR stated that any information or documents furnished will be kept strictly confidential and used for Internal Revenue Tax purposes only.

You now seek guidance from the NPC on the legality of providing the requested information given that the same pertains to natural persons identified as "social media influencers" whose personal data are protected by the DPA and not of "corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts,

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<sup>1</sup> Tags: subscriber records; address; social media influencers; Bureau of Internal Revenue; internal revenue tax purposes; special cases; public authority; proportionality.

<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).

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associations, joint ventures of consortia and registered partnerships, and their members,” as stated in Section 5 (b) of the NIRC, as amended.

In the same vein, you brought up the concern that the request may be inconsistent with the principle of proportionality embodied in the DPA because the list enumerated in Annex A of the BIR letter may or may not be Globe customers and may include entities, not just natural persons.

*Special cases under the DPA; public authority*

The DPA provides specific kinds of information deemed as special cases, particularly under Section 4 of the law. The situation at hand involves the BIR as a public authority with a regulatory function. We reiterate our position in NPC Advisory Opinion No. 2021-28:

“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. 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.’  
(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 transparency, legitimate purpose, and proportionality.”<sup>3</sup>

The BIR is tasked to, among others, ensure compliance with the NIRC, as amended, and other relevant tax laws, rules, and regulations. The DPA recognizes the authority of the BIR Commissioner under Section 5 of the NIRC, to wit:

“SEC. 5. Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons. - In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

- (A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry;
- (B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members; Provided, That the Cooperative Development Authority shall submit to the Bureau a tax incentive report, which shall include information on the income tax, value added tax, and other tax incentives availed of by cooperatives registered and enjoying incentives under Republic Act No. 6938, as amended: Provided, further, That the information submitted by the Cooperative Development Authority to the Bureau shall be submitted to the Department of Finance and shall be included in the database created under Republic Act No. 10708, otherwise known as “The Tax Incentives Management and Transparency Act (TIMTA). x x x”

The above powers of the BIR Commissioner as exercised by him or as duly delegated to other BIR officials to examine any book, paper, record, or other data, and obtain from any person other than the person whose internal revenue tax liability is subject to audit or investigation any information for the limited purposes of (1) ascertaining the correctness of any return, or (2) in making a return when none has been made, or (3) in determining the liability of any person for any internal revenue tax, or (4) in collecting any such liability, or (5) in evaluating tax compliance, is broad enough to cover its request for access to records and registered addresses.

In the case of examining and investigating Social Media Influencers, the authority of the BIR is further supported by RMC No. 97-2021, otherwise known as “Taxation of Any Income Received by Social Media Influencers.”

The RMC clearly stated that Social Media Influencers are required to pay taxes, in accordance with the law, and stated the BIR’s “end goal of raising revenues from the undeclared income (of Social Media Influencers).”<sup>4</sup>

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<sup>3</sup> See: National Privacy Commission, NPC Advisory Opinion No. 2019-022 (07 May 2019), NPC Advisory Opinion No. 2020-015 (24 Feb 2020) and NPC Advisory Opinion No. 2021-28 (16 July 2021).

<sup>4</sup> Bureau of Internal Revenue, Revenue Memorandum Circular No. 97-2021 [BIR RMC No. 97-2021] (16 Aug 2021).

*General data privacy principles; proportionality*

Given the foregoing, it is without doubt that the BIR has authority to investigate Social Media Influencers to determine their tax liabilities and compliance with tax laws and regulations. Globe should then provide the information requested by the BIR RDO pursuant to its mandate while keeping in mind the principle of proportionality.

We note that the letter of the BIR states: "... allowed access to your records and/or furnished with the registered address/es of persons...", with no specification as to the kind of information. While it is clear that the BIR has authority to obtain necessary information for its investigation, the access to records letter, as currently worded, may not align with the principle of proportionality.

In order to comply with the request while upholding the data privacy of its subscribers, Globe may seek clarification with the BIR on what particular information of the subscribers are needed in relation to their specified purposes. Limited personal information of the subscriber concerned that is sufficient to enable the BIR to properly conduct its investigation may be provided.

As the letter gives an option to Globe to provide the registered address only, providing the same may be the least privacy-intrusive manner to comply with the request, unless the BIR provides a more specific list of personal data needed to achieve their declared purposes.

We understand that once the BIR has the requested addresses of the Social Media Influencers, it may then issue its Letter of Authority and transmit the same to the Social Media Influencers. Thereafter, the BIR can just request for the needed documents from the influencers themselves.

On the concern raised about the list containing persons who may not be Globe customers, Globe need not provide any information that it does not have under its custody. As to juridical entities, the processing of their information is well beyond the scope of the DPA, and may be subject to other applicable laws, such as the NIRC.

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