



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

**PRIVACY POLICY OFFICE
ADVISORY OPINION NO. 2020-050¹**

26 November 2020



**Re: DISCLOSURE BY FINTECH, DIGITAL PAYMENT
PLATFORMS, AND TELECOMMUNICATIONS ENTITIES OF
PERSONAL DATA FOR FRAUD INVESTIGATION**

Dear [REDACTED]

We write in response to your letter received by the National Privacy Commission (NPC) which sought to clarify whether the disclosure of personal information provided to financial technology companies, digital payment platforms and telecommunications entities to the credit card issuers for purposes of fraud investigation is allowed under the Data Privacy Act of 2012² (DPA).

In your letter, you disclosed that the credit card industry has been experiencing high volumes of fraudulent transactions which were carried out using various digital payment platforms, which has already caused financial detriment not only to the credit card holders but to the credit card issuers as well. Credit card issuers are compelled to absorb the amount involved in such fraudulent transactions.

You know inquire on whether there is basis for the digital payment platform companies and other related entities, such as the telecommunications companies, to disclose personal information with credit card issuers to prevent financial fraud.

NPC Advisory Opinion No. 2019-041

We reiterate our position in NPC Advisory Opinion No. 2019-041 on the disclosure of personal information provided to online merchants, such as the name, address, delivery address, email address, and mobile or other contact number, to credit card issuers for purposes of fraud investigation.

¹ Tags: personal information; credit card information; fraud investigation; legitimate interests.

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).

In particular, such disclosure finds legal basis under Section 12 (f) of the DPA wherein processing is “necessary for the purposes of the legitimate interests pursued by the personal information controller (PIC) or by a third party or parties to whom the data is disclosed, except where such interests are overridden by fundamental rights and freedoms of the data subject which require protection under the Philippine Constitution.”³

In the determination of legitimate interest, the PIC must consider the following:⁴

1. Purpose test – The existence of a legitimate interest must be clearly established, including a determination of what the particular processing operation seeks to achieve;
2. Necessity test – The processing of personal information must be necessary for the purpose of the legitimate interest pursued by the PIC or third party to whom personal information is disclosed, where such purpose could not be reasonably fulfilled by other means; and
3. Balancing test – The fundamental rights and freedoms of data subjects must not be overridden by the legitimate interests of the PIC or third party, considering the likely impact of the processing on the data subjects.

The foregoing conditions must be established by a PIC in using legitimate interest as lawful basis in the processing of personal information.

Although the DPA does not particularly identify matters to be considered in the PIC’s determination of its legitimate interests, the EU General Data Protection Regulation (GDPR), the successor of the EU Data Protection Directive (Directive 95/46/EC) which highly influenced the DPA, provides some guidance, whereby the processing of personal information strictly necessary for fraud prevention purposes constitutes a legitimate interest.⁵

Hence, the PIC must establish that the disclosure of personal information will strictly be for the resolution of previously committed frauds and the prevention of potential frauds. Further, the PIC must ensure that only personal information which are necessary and proportionate to the declared legitimate interest may be processed.

It is also necessary to establish that the processing of personal information pursuant to the PIC’s legitimate interests will not adversely affect the rights of data subjects. In determining the balancing of rights and interests, it is important to identify whether the data subject had reasonable expectation at the time and in the context of collection of personal information that processing for fraud investigation may occur.⁶ Transparency during the collection of personal information and the relationship between the PIC and the data subject are just some of the factors which may be taken into consideration in evaluating reasonableness.⁷

We also recognize the provisions of the Philippine Credit Card Industry Regulation Law, the governing law of the credit card industry. Under such law, the disclosure of credit card

³ See, NPC Advisory Opinion No. 2019-041.

⁴ See generally, Data Privacy Act of 2012, § 12 (f); United Kingdom Information Commissioner’s Office (ICO), What is the ‘Legitimate Interests’ basis?, available at <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/legitimate-interests/what-is-the-legitimate-interests-basis/> [last accessed on 9 November 2020].

⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) Official Journal of the European Union, Vol. L119, Recital 47 (2016).

⁶ EU GDPR, Recital 47

⁷ See also, National Privacy Commission, NPC Case No. 17-047, pages 7-9, available at <https://www.privacy.gov.ph/wp-content/uploads/2020/10/CID-17-047-JV-v.-JR-Decision-PSD-10Aug2020.pdf>.

information to third parties is allowed, provided it is for the purpose of fraud investigation, unauthorized activities or mitigating the risks involving card issuance, use and acquisition.⁸

Under these circumstances, the data subjects who made online payments through the financial technology companies, digital payment platforms and telecommunications entities may reasonably expect that such entities to whom they have provided their credit card information must guarantee the authenticity of their credit cards and the validity of said transactions. In this context, credit card information may be disclosed to credit card issuers, provided such disclosure is strictly for fraud investigation purposes only.

*General data privacy principles;
implementation of security measures*

While there is lawful basis in the processing of personal information in the matter at hand, the financial technology companies, digital payment platforms and telecommunications entities still have the obligation to observe the general data privacy principles of transparency, legitimate purpose and proportionality and to take the necessary measures to uphold the rights of the data subjects.

To reiterate, PICs shall only process personal information for a declared purpose which is made known to the data subjects. Further, the processing of personal information shall be limited only to those that are necessary for the declared purpose which is fraud investigation.

As PICs, the above entities are also responsible for the implementation of reasonable and appropriate physical, organizational, and technical security measures to uphold the privacy of personal information within their custody. Among others, PICs are required under the DPA to regularly monitor for security breaches and take the appropriate and necessary preventive, corrective and mitigating measures against potential security breaches.⁹

We also take note of your concern for NPC to intervene or take action regarding the “rampant financial fraud taking place with the fraudsters hiding behind the Data Privacy Act”. We constantly remind all PICs that the DPA should not be seen as an obstacle in obtaining the necessary information for fraud prevention since such processing is recognized under the law. We likewise cooperate with the pertinent government agencies who are involved in investigating financial fraud and other related offenses.

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.) RAYMUND ENRIQUEZ LIBORO
Privacy Commissioner

⁸ An Act Regulating the Philippine Credit Card Industry [Philippine Credit Card Industry Law], Republic Act No. 10870, § 16 (f) (2016).

⁹ Data Privacy Act of 2012, § 20 (c) (4) (2012).