



Republic of the Philippines  
NATIONAL PRIVACY COMMISSION

1 **NPC Circular No. 2023 - \_\_\_\_**  
2

**DATE** : \_\_\_\_\_

**SUBJECT** : **GUIDELINES ON CONSENT**

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4 **WHEREAS**, Section 7 of the DPA provides that the National Privacy Commission (NPC) is  
5 charged with the administration and implementation of Republic Act No. 10173 or the Data  
6 Privacy Act of 2012 (DPA), which includes ensuring the compliance by personal information  
7 controllers (PIC) with the provisions of the Act, and carrying out efforts to formulate and  
8 implement plans and policies that strengthen the protection of personal information, sensitive  
9 personal information, and privileged information (collectively, personal data), in the country  
10 in coordination with other government agencies and the private sector;

11  
12 **WHEREAS**, under Section 9 of the Implementing Rules and Regulations of the DPA (IRR),  
13 the Commission has the mandate to, among others, develop, promulgate, review, or amend  
14 rules and regulations for the effective implementation of the DPA;

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16 **WHEREAS**, Sections 12 and 13 of the DPA enumerate the various criteria for lawful  
17 processing of personal data which includes the consent of the data subject;

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19 **WHEREAS**, consent of the data subject refers to any freely given, specific, informed indication  
20 of will, whereby the data subject agrees to the processing of personal data about or relating to  
21 him or her, and evidenced by written, electronic, or recorded means. Consent may also be  
22 given on behalf of the data subject by an agent specifically authorized by the data subject to  
23 do so;

24  
25 **WHEREAS**, consent is the most commonly used criterion for processing personal data and  
26 the NPC has determined the need to further elaborate on its concept and usage;

27  
28 **WHEREFORE**, in view of the foregoing, the NPC hereby issues this Circular to provide  
29 guidelines on the use of consent as a lawful basis for processing personal data.

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32 **SECTION 1. *Scope and Purpose.*** – This Circular shall apply to a PIC engaged in the  
33 processing of personal data based on the consent of the data subject.

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35 This Circular shall provide guidance on what constitutes valid consent, and how it shall be  
36 obtained and managed in compliance with the DPA and its IRR.

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38 This Circular is limited to the requirements of consent in relation to the processing of personal  
39 data. Nothing in this Circular shall be construed as modifying the existing general legal

40 framework on obligations and contracts under the provisions of the Civil Code of the  
41 Philippines and other applicable laws and regulations.

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43 **SECTION 2. *Definition of Terms.*** – Terms used in the DPA and its IRR, as amended, are  
44 adopted herein. In addition, whenever used in this Circular, the following terms are defined  
45 as follows:

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47 A. “At set-up notice” refers to a privacy notice shown before a data subject installs a  
48 mobile application or a software;

49

50 B. “Consent fatigue” refers to a situation where consent questions are no longer read, as  
51 a result of multiple consent requests received by a data subject on a daily basis that  
52 require answers or decisions;<sup>1</sup>

53

54 C. “Context dependent notice” refers to a privacy notice activated by certain aspects of  
55 the data subject’s context, such as location or persons who will have access to the  
56 information or warnings about potentially unintended settings;

57

58 D. “Deceptive Design Patterns” are design techniques embedded into manual and online  
59 interfaces and platforms that aim to manipulate and deceive a data subject into  
60 performing acts that may limit autonomy in decision-making in relation to the  
61 processing of personal data in that specific interface or platform. This includes dark  
62 patterns;

63

64 E. “Just-in-time notice” refers to a privacy notice that provides information on how  
65 personal data will be processed at the point in time when the PIC is about to process  
66 such information;

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68 F. “Layered Privacy Notice” refers to a short privacy notice that provides key privacy  
69 information and contains link/s to more detailed information on the personal data  
70 required by the PIC, as well as the processing of such information, in accordance with  
71 Section 34(a)(2) of the IRR, as amended;<sup>2</sup>

72

73 G. “Minimum specific information” refers to the least amount of information specific to  
74 a particular processing activity that must be disclosed to the data subject at the point  
75 where they are asked to give consent. This pertains to key information such as the  
76 identity of the PIC and a brief description of how the information will be processed;<sup>3</sup>

77

78 H. “Opt-in box” refers to a box that the data subject must tick or mark to indicate his or  
79 her express agreement to the proposed processing of his or her personal data;

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81 I. “Opt-out box” refers to a box that the data subject must untick or unmark in order to  
82 object or opt-out to the processing of his or her personal data; and

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<sup>1</sup> Article 29 Working Party, Guidelines on consent under Regulation 2016/679, Adopted on 28 November 2017. See also European Data Protection Board, Guidelines 05/2020 on consent under Regulation 2016/679, Adopted on 4 May 2020, *available at*: [https://edpb.europa.eu/sites/default/files/files/file1/edpb\\_guidelines\\_202005\\_consent\\_en.pdf](https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_202005_consent_en.pdf) (last accessed on 2 February 2023).

<sup>2</sup> See: Information Commissioner’s Office, “What methods can we use to provide privacy information?” *available at*: <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/the-right-to-be-informed/what-methods-can-we-use-to-provide-privacy-information/> (last accessed: 7 February 2023).

<sup>3</sup> *Id.*

- 83  
84 J. “Research” refers to an activity that aims to develop or contribute to knowledge that  
85 can be generalized including theories, principles, relationships, or any accumulation  
86 of information using scientific methods, observation, inference, and analysis.<sup>4</sup>  
87  
88

## 89 GENERAL DATA PRIVACY PRINCIPLES 90

91 **SECTION 3. Transparency.** – A PIC shall ensure that the data subject is aware of the nature,  
92 purpose, and extent of the processing of personal data. This includes the risks and safeguards  
93 involved, the identity of the PIC, the rights of the data subject, and how these can be exercised.  
94 Transparency empowers data subjects to make informed choices, and where applicable, to  
95 have reasonable control over the processing of their personal data, and to hold a PIC  
96 accountable based on the information provided at the time consent was given.  
97

- 98 A. *Specific information.* At the minimum, the following information should be provided in  
99 a concise statement: description of the personal data to be processed, the purpose,  
100 nature, extent, duration, and scope of processing for which consent is used as basis,  
101 the identity of the PIC, the existence of the rights of the data subject, and how these  
102 rights can be exercised.  
103  
104 B. *Timing.* Such concise information should be provided at the moment when consent is  
105 obtained (*e.g.*, at set-up, just-in-time, context-dependent). Further information or  
106 additional details should be made available to the data subject by means of a Layered  
107 Privacy Notice (*i.e.*, use of a link to the detailed information on the processing).  
108  
109 C. *Clarity.* A PIC shall use clear, plain, consistent, and straight-forward language when  
110 providing information to the data subject. A PIC shall avoid the use of vague<sup>5</sup> or  
111 blanket wording, convoluted information, technical jargon, confusing terminologies,  
112 double negatives, and deliberately providing information in a circuitous manner.  
113 Providing the data subject with information that is difficult to understand, lengthy, or  
114 complex is inconsistent with informed consent.  
115  
116 D. *Form.* The following clarifications and distinctions are made on these forms or  
117 statements:  
118  
119 1. *Privacy Statement.* It is a general statement on a PIC’s personal data processing  
120 practices across the entire organization.  
121  
122 2. *Privacy Policy.* It is a set of policies that governs a PIC’s personal data processing  
123 practices. It provides guidance to internal relevant parties (*i.e.*, officers, employees)  
124 involved in any personal data processing activity. It is also referred to as a “Privacy  
125 Manual.”  
126  
127 3. *Privacy Notice.* It is a unilateral statement that contains essential information on a  
128 specific processing activity of a PIC that involves the data subject.

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<sup>4</sup> Philippine Health Research Ethics Board Ad Hoc Committee for Updating the National Ethical Guidelines, National Ethical Guidelines for Health and Health Related Research, Introduction, p. 5 (2017).

<sup>5</sup> JVA v. UXXX, NPC Case No. 19-498, 9 June 2020, available at: <https://www.privacy.gov.ph/wp-content/uploads/2022/01/Decision-NPC-Case-No.-19-498-JVA-v.-UXXX.pdf> (last accessed: 2 February 2023).

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- a. A PIC should use clear and plain language in its privacy notice.<sup>6</sup> Information on how the personal data will be processed must be easily apparent to the data subject. The information should be provided in the simplest manner possible and avoid using complex sentences or language structures.<sup>7</sup> The use of layman’s terms is encouraged to ensure that the data subject understands the processing, but not at the risk of miscommunicating the technical and complex concepts.<sup>8</sup> In cases where the consent is obtained manually, the notice may be presented in a comprehensive manner, taking into account the medium used for presentation (*e.g.*, printed notices). For electronic processing of personal data where the surrounding circumstances and particular medium utilized may limit the manner in which a notice is presented, a link to a more comprehensive notice should be readily available.
  - b. The information provided in a privacy notice should be concrete and definitive. It should not be phrased in abstract or ambivalent terms or leave room for different interpretations. Provisions that use vague, circuitous, or overbroad language do not conform with the principle of transparency. Thus, a PIC should examine if an average member of the target audience will understand the information in the privacy notice provided to them.
  - c. A PIC shall convey the appropriate privacy notice for the specific processing or transaction before the processing is to take place or at the next practical opportunity. The information must be provided in a manner that is easy to access taking into consideration user experience and user interface. In cases of electronic notice, this may be done by posting a Layered Privacy Notice on the website or application embodying the minimum specific information for transparency purposes. The privacy notice embodying the minimum specific information should be able to direct the data subject to additional and detailed information relevant to the particular processing that will be done at that point in time;
  - d. A PIC may use creative options such as dynamic or interactive infographics, auditory notices through announcement or pre-recorded audios, or short videos. The information may also be delivered by a scripted spiel delivered on or before entry into the system. A PIC may also use any similarly creative options that can help the data subject easily understand the processing.
4. *Consent Form.* It should contain all the information required in a privacy notice and indicate that the lawful criteria for processing relied on is consent. Consequently, it must contain a PIC’s proposal to the data subject asking the latter to consent to the processing of personal data pursuant to the terms stated in the consent form. The data subject’s acceptance of the provisions of the consent form creates a contract between him or her and a PIC on the terms of processing of the personal data.

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<sup>6</sup> See JRG v. CXXX Lending Corporation, NPC Case No. 19-450, 9 June 2020, available at: [https://www.privacy.gov.ph/wp-content/uploads/2022/01/Decision\\_NPC-19-450-JRG-v.-CXXX.pdf](https://www.privacy.gov.ph/wp-content/uploads/2022/01/Decision_NPC-19-450-JRG-v.-CXXX.pdf) (last accessed: 2 February 2023).

<sup>7</sup> NPC Case No. 19-531, 21 May 2020, (NPC 2020) (Unreported).

<sup>8</sup> JRG v. CXXX Lending Corporation, NPC Case No. 19-450, 9 June 2020, available at: [https://www.privacy.gov.ph/wp-content/uploads/2022/01/Decision\\_NPC-19-450-JRG-v.-CXXX.pdf](https://www.privacy.gov.ph/wp-content/uploads/2022/01/Decision_NPC-19-450-JRG-v.-CXXX.pdf) (last accessed: 2 February 2023).

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5. *When required.* The requirement of having a privacy statement and notice is separate and distinct from obtaining the consent of the data subject in an appropriate consent form or its equivalent for the lawful processing of personal data.
- a. *General rule.* A privacy notice is required in any instance of processing, whether based on consent, other lawful criteria for processing under Sections 12 or 13 of the DPA, or where processing is under a special case pursuant to Section 4 of the DPA.
- b. *Exception.* When a consent form already provides the essential information on the personal data processing activity that enables the data subject to make an informed decision, a separate privacy notice on that specific processing is no longer necessary.
- E. *Accessibility of information.* Information on the processing of personal data must be easy to access and understandable. The information must be readily available and in a language that an average member of the target audience can understand.
- F. *Accountability.* A PIC shall be held responsible for the information provides to the data subject to obtain consent for the processing of personal data. Insufficiency of the information provided by a PIC to the data subject may result in the invalidity of the consent given.

**SECTION 4. *Legitimate Purpose.*** – Prior to the commencement of the processing activity, a PIC shall determine and declare the specific purpose of processing and shall ensure that such purpose is not contrary to law, morals, good customs, public order, or public policy.

- A. A PIC shall identify at the outset all the purposes for the processing of personal data which must not be contrary to law, morals, or public policy. In communicating these purposes to the data subject, a PIC commits that these specified and declared purposes define the bounds of the consent given.<sup>9</sup>
- B. When a PIC revises its terms and conditions, retaking of consent is not necessary if the purpose, scope, method, and extent of processing remains to be the same as that disclosed to the data subject at the time consent was given.

**SECTION 5. *Proportionality.*** – A PIC must ensure that the proposed processing of personal data is adequate, relevant, suitable, necessary, and not excessive in relation to a declared and specified purpose.

- A. As a general rule, personal data shall be processed only if the purpose of the processing could not be reasonably fulfilled by other less intrusive means.
- B. A PIC may process additional personal data if the data subject validly consents to the additional processing prior to the collection of the personal data or as soon as

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<sup>9</sup> JV v. JR, NPC Case No. 17-047, 13 August 2019, available at: <https://www.privacy.gov.ph/wp-content/uploads/2020/10/CID-17-047-JV-v.-JR-Decision-PSD-10Aug2020.pdf> (last accessed on: 2 February 2023).

221 practicable and reasonable.

222

223 1. Processing additional personal data for the purpose of availing goods or services  
224 or enhancing services is allowed when such additional personal data and act of  
225 processing is proportional to the additional purpose.

226 2. Consent for processing additional personal data for additional purposes must be  
227 embodied in the appropriate agreements that clearly indicate all the elements of  
228 valid consent.

229

230 C. When the processing is based on another lawful criteria, a PIC need not obtain the  
231 consent of the data subject for such processing: *provided*, that the requirements of such  
232 other lawful criteria are met.

233

234 D. A PIC must limit the collection of personal data to what is directly relevant and  
235 necessary to accomplish a specified purpose. Thus, a PIC must only ask for consent  
236 to process personal data that is directly relevant and necessary for the specified and  
237 declared purpose.

238

239 **SECTION 6. Fairness.** – A PIC shall ensure that personal data is processed in a manner that  
240 is neither manipulative nor unduly oppressive to the data subject.

241

242 A. To determine fairness in processing of personal data based on consent, the following  
243 factors must be considered:

244

- 245 1. The purpose of the processing;
- 246 2. The amount of personal data collected;
- 247 3. The specific processing, including the manner of collection, to be conducted on the  
248 personal data;
- 249 4. The manner by which the information on the processing is conveyed to the data  
250 subject;
- 251 5. The manner of collection of the personal data;
- 252 6. The free will of the data subject when providing consent;
- 253 7. How the data subject gave consent; and
- 254 8. The retention period of the personal data.

255

256 B. The processing of personal data for additional purposes other than those for which the  
257 personal data were initially collected may be allowed. Consent for processing for  
258 additional purposes shall not be required when (i) the further processing is not beyond  
259 what the data subject may reasonably expect on the purpose, scope, manner, and  
260 extent of the processing of personal data; and (ii) the purpose of further processing is  
261 compatible with the original purpose for which the personal data were initially  
262 collected and communicated to the data subject.

263

264 In assessing this, a compatibility assessment for further processing of personal data is  
265 made where the following factors must be established:

- 266 1. A clear and reasonable link between the original purposes and the purposes of the  
267 intended further processing;
- 268 2. The context in which the personal data has been collected, particularly the data  
269 subject's reasonable expectations on further use based on the relationship with the

- 270 PIC;
- 271 3. The nature of the personal data;
- 272 4. The impact of further processing to the data subject; and
- 273 5. The existence of reasonable and appropriate security measures in both the original
- 274 and intended further processing operations.<sup>10</sup>
- 275
- 276 C. Consent for additional purposes is required when the additional purpose is
- 277 incompatible with the original purpose for which the personal data were initially
- 278 collected or is beyond what a data subject may reasonably expect in relation to the
- 279 purpose, scope, manner, and extent of the processing of personal data.
- 280
- 281

## 282 ELEMENTS OF CONSENT

283

284 **SECTION 7. *Freely given.*** – A data subject must have a genuine choice and control over

285 their decision to consent to the processing of their personal data.<sup>11</sup>

286

- 287 A. *Public authorities.* Generally, public authorities process personal data based on the
- 288 applicable provisions of Section 4 on special cases, and Sections 12 (c), (d), (e) and 13
- 289 (b), (c), (f) of the DPA which relates to the performance of their public functions or the
- 290 provision of public services based on law or regulation. Where the processing falls
- 291 under the aforementioned bases, the consent of the data subject is not necessary.
- 292

293 Public authorities cannot undertake additional processing contemplated by law or

294 regulation by obtaining consent if the primary basis for the processing of personal data

295 is compliance with law or regulation.

296

297 The use of consent as a lawful basis for processing by public authorities is permissible

298 under the DPA and may be appropriate when the processing activity is not related to

299 or an extension of that required by law or regulation. In such cases, the requisites for

300 valid consent must be complied with.

301

- 302 B. *Contract of adhesion.* A contract of adhesion is a contract where one party imposes a
- 303 ready-made form of contract on the other party.<sup>12</sup> A contract of adhesion is valid under
- 304 the Philippine legal system. Thus, consent given to a contract of adhesion that contains
- 305 provisions on the processing of personal data shall likewise be valid for such
- 306 processing:<sup>13</sup> *provided*, that all of the following conditions are complied with:
- 307

- 308 1. The contract of adhesion must contain all the information necessary to
- 309 demonstrate transparency;
- 310 2. The processing of personal data must be necessary and for a legitimate purpose;
- 311

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<sup>10</sup> *JV v. JR*, NPC Case No. 17-047, at 9; *See*: Council of Europe, Explanatory Report to the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, available at <https://rm.coe.int/cets-223-explanatory-report-to-the-protocol-amending-the-convention-fo/16808ac91a> (last accessed 2 February 2023).

<sup>11</sup> *MNLC, Inc. v. IKP*, NPC Case No. 19-528, 29 October 2020, available at: [https://www.privacy.gov.ph/wp-content/uploads/2022/01/Decision\\_NPC-19-528-MNLC-v.-PXXX-Corporation.pdf](https://www.privacy.gov.ph/wp-content/uploads/2022/01/Decision_NPC-19-528-MNLC-v.-PXXX-Corporation.pdf) (last accessed: 2 February 2023).

<sup>12</sup> *Dia v. St. Ferdinand Memorial Park, Inc.*, as cited in *Cabanting v. BPI Family Savings Bank, Inc.*, G.R. No. 201927, 17 February 2016.

<sup>13</sup> *VVC v. CJB*, NPC Case No. 19-134, 10 Dec. 2021, available at: <https://www.privacy.gov.ph/wp-content/uploads/2022/04/NPC-19-134-VVC-v.-CJB-Decision-2021.12.10.pdf> (last accessed: 7 February 2023).

- 312 3. The processing should not be excessive in relation to the fulfillment of obligations  
313 contemplated in the contract; and  
314 4. The processing is fair and lawful.  
315

316 **SECTION 8. *Specific.*** – A PIC must ensure that the data subject provides specific consent  
317 to the specific and declared purposes of the processing of personal data.  
318

319 Consent must be granular. In cases where personal data is processed for multiple purposes, a  
320 PIC shall present to the data subject the list of purposes and allow the data subject to select  
321 which purposes he or she consents to, instead of requiring an all-inclusive consent to the  
322 processing for multiple purposes.  
323

- 324 A. If processing personal data is necessary to provide the goods or services sought to be  
325 availed of, a PIC must provide information about that specific processing and include  
326 it in the terms and conditions for the provision of the goods or service. Such  
327 information should form part of what the data subject consents to.<sup>14</sup>  
328 B. Consent to processing that is not necessary for the provision of goods or services  
329 should not be bundled with or made a condition for the provision of the goods or the  
330 services. In cases where there is additional processing on the collected personal  
331 information for an additional purpose, a PIC must ensure that the consent for such  
332 processing is given by the data subject separately.  
333 C. Vague or blanket consent is prohibited. Consent given based on vague or blanket  
334 statements is invalid consent.  
335

336 **SECTION 9. *Informed.*** – A PIC should provide to the data subject all relevant information  
337 that is necessary for the data subject to make an informed decision.<sup>15</sup> Such information must  
338 be easily understood by an average member of the target audience to ensure that the data  
339 subject has a sufficient understanding of what they are consenting to.<sup>16</sup>  
340

- 341 A. *Appropriate information.* Prior to obtaining consent, a PIC shall ensure that it provides  
342 the appropriate information to the data subject, taking into account the most suitable  
343 language or dialect for the intended data subject, in accordance with Section 3 (E). It  
344 shall explain such information in detail to the data subject if the same is unclear.  
345

346 The information to be provided to the data subject shall be appropriate and relevant  
347 at that point in time in relation to the personal data processing activity requiring  
348 consent.  
349

- 350 B. *Consent fatigue.* If the data subject finds his or herself overwhelmed by numerous and  
351 lengthy forms and notices, then there is a risk that the consent will be improperly  
352 given. Consent fatigue undermines the purpose of obtaining consent as it desensitizes  
353 the data subject and makes him or her ignore the requisites for valid consent.  
354

- 355 1. In order to avoid consent fatigue, a PIC must properly identify the lawful basis for

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<sup>14</sup> In re: FLI Operating ABC Online Lending Application, NPC Case No. 19-910, 17 December 2020, *available at*: <https://www.privacy.gov.ph/wp-content/uploads/2021/02/NPC-19-910-In-re-FLI-Decision-LYA-Final-pseudonymized-17Dec2020-.pdf> (last accessed: 6 February 2023).

<sup>15</sup> *AMP v. HXXX Lending Inc.*, NPC Case No. 19-621, 19 November 2020, *available at*: [https://www.privacy.gov.ph/wp-content/uploads/2022/01/Decision\\_NPC-19-621-AMP-v.-HXXX-Lending.pdf](https://www.privacy.gov.ph/wp-content/uploads/2022/01/Decision_NPC-19-621-AMP-v.-HXXX-Lending.pdf) (last accessed: 6 February 2023).

<sup>16</sup> *JVA v. UXXX*, NPC Case No 19-498, *at* 8.



356 processing prior to the collection of personal data. If the processing falls under  
357 another lawful basis under the DPA, then a request for consent is unnecessary.  
358 2. A PIC shall minimize the risk of consent fatigue in its target data subject.  
359

360 C. *Just-in-time and Layered Notices.* The usage of just-in-time and layered notices in  
361 presenting the relevant information to the data subject should be the default format.  
362

363 **SECTION 10. *An indication of will.*** – Consent must be expressly given through a clear  
364 assenting action that signifies agreement to the specific purposes of the processing of personal  
365 data as conveyed to the data subject at the time consent was given.<sup>17</sup>  
366

367 A. *Implied consent.* Consent can never be assumed. Non-response or implied consent does  
368 not constitute valid consent. “Implied consent,” for the purposes of this Circular, refers  
369 to consent given by action or inaction which is only inferred from the surrounding  
370 circumstances when it was given.  
371

372 B. *Action of the data subject.* Assenting actions are those which indicate agreement to  
373 processing activity as described in the information provided by the PIC. A PIC must  
374 provide clear information to the data subject on what a particular action means prior  
375 to requesting for the data subject’s consent.  
376

377 C. *Continued use of service.* Provided that all the elements of consent are present and the  
378 PIC provides the data subject with information on the processing of personal data for  
379 a specific service, the continued use of the PIC’s specific service is an assenting action  
380 signifying consent.  
381

382 **SECTION 11. *Evidenced by written, electronic, or recorded means.*** – A PIC must ensure that  
383 the consent obtained from a data subject is evidenced by written, electronic, or recorded  
384 means. Any of the three formats may be adopted by a PIC. There is no preference among the  
385 different formats.  
386

## 387 388 **OBTAINING CONSENT**

389  
390 **SECTION 12. *General Considerations.*** – A PIC shall obtain the consent of the data subject  
391 in a manner that complies with all the requisites for valid consent.<sup>18</sup> A PIC may also acquire  
392 consent from a data subject’s lawful representative, or an agent specifically authorized for that  
393 specific purpose.  
394

395 A. Any evidence, in accordance with the Rules of Court, shall be sufficient, provided that  
396 the following are established:  
397

- 398 1. The information on the processing of personal data presented to the data subject;
- 399 2. The PIC provided the data subject with the information on personal data  
400 processing at the time of the giving of the consent; and
- 401 3. The data subject did an act to signify his or her consent in relation to the  
402 information her or she was provided.

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<sup>17</sup> JVA v. UXXX, NPC Case No 19-498, at 8.

<sup>18</sup>*Id.*

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- B. A PIC must be able to demonstrate that the data subject has consented to the processing of personal data for the particular purpose.
1. A PIC shall keep evidence of the consent of a data subject, and exactly what the data subject has consented to, particularly: the date when the consent was obtained, method of obtaining consent, who obtained the consent, and what information was provided to the data subject. If consent was given physically, the hard copies may either be kept as they are or logged and recorded by the PIC.
  2. A PIC should develop consent mechanisms that are reasonable and appropriate to their personal data processing activities. While there is a requirement to be able to demonstrate that consent has been obtained, this should not in itself lead to additional or excessive personal data processing. A PIC should only keep enough data to show that consent was obtained in relation to a specific processing.<sup>19</sup>
- C. A PIC shall not use deceptive methods, such as deceptive design patterns, or any form of coercion, compulsion, threat, intimidation, or violence in obtaining the consent of the data subject. Consent is not freely given in instances where there is any element of pressure, intimidation, possibility of adverse consequences for refusal to give consent, or any other inability to exercise free will by the data subject. In accordance with Section 5 (A), however, incentivizing consent by offering benefits to the data subject and similar actions of a PIC shall not automatically be construed as a deceptive method, coercion or compulsion that renders the consent as not freely given. The Commission may make such determination on a case-to-case basis.

## WITHDRAWAL OF CONSENT

**SECTION 13. General Considerations.** – Consent can be withdrawn at any time and without cost to the data subject, subject to certain limitations as may be provided for by law, regulation, or contract. Should a data subject choose to exercise the right to withdraw consent to the processing, a PIC is obliged to stop the processing without undue delay and delete the personal data if there is no other lawful basis or purpose justifying the continued processing.

- A. A PIC shall ensure that withdrawing consent is as easy as giving consent. A PIC is obliged to implement simple procedures to enable the data subject to exercise the right to erasure, including suspend, withdraw or order the blocking, removal, or destruction, of personal data from the PIC’s repository. When the right to erasure is exercised, A PIC may employ manual or technical means for the effective management of the consent withdrawal across all its personal data processing systems.
- B. A PIC shall avoid utilizing or switching to another interface for the sole purpose of consent withdrawal since this would require undue effort from the data subject.<sup>20</sup> Where consent is obtained or recorded via electronic means through a mouse-click, swipe, or keystroke, the data subject should be able to withdraw the consent as easily

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<sup>19</sup> See: European Data Protection Board, Guidelines 05/2020 on consent under Regulation 2016/679 Version 1.1, Adopted on 4 May 2020, available at [https://edpb.europa.eu/sites/default/files/files/file1/edpb\\_guidelines\\_202005\\_consent\\_en.pdf](https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_202005_consent_en.pdf) (last accessed 2 February 2023).

<sup>20</sup> *Ibid.*

448 as it was given.<sup>21</sup> The use of a service-specific user interface for obtaining consent (e.g.,  
449 application or a log-in account) should also be the one used for withdrawing consent.<sup>22</sup>

- 450
- 451 C. A PIC shall provide the data subject with adequate information on the scope and  
452 consequences of the withdrawal of consent. This includes informing the data subject  
453 of any further processing of personal data, its purposes, and the corresponding lawful  
454 bases relied on for those other purposes.
- 455
- 456 D. Where consent is withdrawn by the data subject, the withdrawal shall not affect the  
457 lawfulness of the processing before the withdrawal of such consent.
- 458
- 459 E. A PIC shall determine and implement a reasonable retention period for personal data  
460 after the data subject withdraws consent, taking into account the other lawful bases  
461 for processing, industry best practices or standards, and other relevant factors.
- 462

## 463 GUIDELINES ON SPECIFIC PROCESSING ACTIVITIES

464

465

466 **SECTION 14. *Direct Marketing.*** – Processing for direct marketing purposes may require  
467 consent in certain instances.

468

- 469 A. A PIC shall obtain the consent of the data subject for direct marketing purposes in  
470 cases where the nature of the processing would significantly affect the rights and  
471 freedoms of the data subject, (e.g., analyzing or predicting the personal preferences,  
472 behavior and attitudes of the data subject that will subsequently inform decisions that  
473 are taken with regard to the data subject,<sup>23</sup> tracking and profiling for purposes of direct  
474 marketing, behavioral advertisement, data-brokering, location-based advertising or  
475 tracking-based digital market research,<sup>24</sup> and other analogous instances that may be  
476 deemed intrusive).
- 477
- 478 B. When processing is limited to personal information, it is possible to consider direct  
479 marketing as a legitimate interest under Section 12 (f) of the DPA and the processing  
480 will not require the consent of the data subject. This will be determined on a case-to-  
481 case basis. If the initial basis for processing is consent and the consent is withdrawn,  
482 then a PIC cannot claim legitimate interests as the basis for processing. The rights of  
483 the data subject to withdraw consent and to object to the processing, in this case, is  
484 absolute.
- 485

486 **SECTION 15. *Data sharing.*** Where data sharing is based on consent, a PIC shall ensure that  
487 the data subject is provided with specific information regarding the data sharing arrangement  
488 and that the data subject specifically and knowingly consents to such data sharing and the  
489 purpose of the data sharing arrangement.

490

- 491 A. Each affected data subject shall be provided with the relevant information before his

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<sup>21</sup> See: European Data Protection Board, Guidelines 05/2020 on consent under Regulation 2016/679, Adopted on 4 May 2020.

<sup>22</sup> *Ibid.*

<sup>23</sup> See: Opinion 06/2014 on the notion of legitimate interests of the data controller under Article 7 of Directive 95/46/EC, Adopted on 9 April 2014, available at: [https://ec.europa.eu/justice/article-29/press-material/public-consultation/notion-legitimate-interests/files/20141126\\_overview\\_relating\\_to\\_consultation\\_on\\_opinion\\_legitimate\\_interest\\_.pdf](https://ec.europa.eu/justice/article-29/press-material/public-consultation/notion-legitimate-interests/files/20141126_overview_relating_to_consultation_on_opinion_legitimate_interest_.pdf) (last accessed 2 February 2023).

<sup>24</sup> *Id.*

492 or her personal data is shared or at the next practical opportunity, through a consent  
493 form or its equivalent, including the identities of the PICs who are parties to the data  
494 sharing arrangement, when already known. Otherwise, the categories of recipients  
495 should be provided at the outset: *provided*, that further details should be made  
496 available to the data subject through an appropriate privacy notice.  
497

498 B. Where consent was obtained by one PIC who is a party to a data sharing arrangement,  
499 the other PIC may rely on such consent given: *provided*, that all parties to the sharing  
500 arrangement shall be accountable for upholding the exercise of the rights of the data  
501 subjects.  
502

503 C. The records related to the data sharing arrangement shall contain the proof of consent  
504 obtained from the data subject, including the date and time it was obtained or  
505 withdrawn, where applicable.  
506

507 **SECTION 16. *Research.*** Processing of personal data for research purposes shall comply with  
508 the requirements of applicable laws, regulations, and ethical standards, including but not  
509 limited to obtaining an informed consent from the data subject, unless the processing may be  
510 justified by some other lawful criteria provided under the DPA.  
511

512 A. The DPA grants the processing of personal data for research purposes with flexibility,  
513 as the law recognizes that research is critical to nation-building and serves the interest  
514 of the public, especially if the same is conducted by government agencies, non-  
515 governmental organizations, academic institutions, or similar entities.  
516

517 B. If obtaining consent before the gathering of information will affect the results of the  
518 research, a PIC should obtain the consent of the data subject within a reasonable time  
519 from the conclusion of the gathering of relevant information. The consent should be to  
520 validate the prior collection of information and for the further processing of the  
521 information collected.  
522

523 C. The conduct of research does not always require the acquiring of consent.  
524

525 1. Research conducted through observation of public behavior does not require  
526 consent unless the research will disclose the personal data of the observed research  
527 subjects.

528 2. The conduct of research where the end results will be anonymized and will only  
529 disclose the general demographic of the research subjects does not require the  
530 consent of the data subject.  
531

532 D. Likewise, certain rights of the data subject may also be limited according to the  
533 standards prescribed by the PIC where such limitation is necessary to maintain  
534 research integrity.  
535

536 **SECTION 17. *Publicly available information.*** The fact that the data subject provided  
537 personal data in a publicly accessible platform does not mean that blanket consent has been  
538 given for the use of their personal data for whatever purposes. Any processing of publicly  
539 available information must still find basis under Sections 12 and 13 of the DPA.  
540

541 **SECTION 18. *Profiling and automated processing.*** A PIC shall inform the data subject of the  
542 existence and specific details of the profiling or automated processing of personal data before  
543 its entry into the processing system of the PIC, or at the next practical opportunity.

- 544
- 545 A. A PIC engaged in any wholly or partly automated processing operations are required  
546 to notify the Commission, pursuant to the Circular on the notification regarding  
547 automated decision-making or profiling, and the data subject, in accordance with  
548 Section 16 (c)(6) of the DPA.
- 549
- 550 B. A PIC shall ensure that there are safeguards against the harms of extensive profiling  
551 such as discriminatory outcomes and infringement on the right to fair treatment.
- 552
- 553 C. A PIC shall obtain the consent of the data subject when automated processing is the  
554 sole basis for a decision that produces legal effects on or may significantly affect the  
555 data subject .
- 556

## 557 MISCELLANEOUS PROVISIONS

558

559

560 **SECTION 19. *Consent as an essential element of contracts.*** – The processing of sensitive  
561 personal information through a contract between a PIC and a data subject is understood to be  
562 processing based on consent of the data subject under Section 13 (a) of the DPA as long as the  
563 contract entered into complies with the requirements for consent under the DPA.

564

565 **SECTION 20. *Waiver of the rights of the data subject.*** – A waiver by a data subject of his  
566 or her data privacy rights, including the right to file a complaint, is void.

567

568 **SECTION 21. *Period for validity of consent.*** – Generally, consent remains valid as long as  
569 the information communicated in relation to the scope, purpose, nature, and extent of the  
570 processing remains and still holds true.

571

- 572 A. If the scope, purpose, nature, and extent of the processing involved changes or evolves  
573 considerably, then the original consent given is no longer valid. A PIC shall obtain new  
574 consent in accordance with the revised or updated information on the processing of  
575 personal data.
- 576
- 577 B. A PIC shall determine whether it is still reasonable to treat the consent as an ongoing  
578 indication of the data subject’s current choices based on the context in which consent  
579 was originally given and the nature of its relationship with the data subject. However,  
580 consent that is clearly only intended to cover a certain period of time or a particular  
581 context will not be equivalent to an ongoing consent for all future processing of  
582 personal data.
- 583
- 584 C. The validity of consent shall depend on the PIC’s compliance with the general data  
585 privacy principle of transparency for the processing. The sufficiency of the disclosures  
586 made by a PIC shall be examined based on what an average member of its target  
587 audience can understand, taking in consideration the language that was used.
- 588
- 589 D. Obtaining consent shall not be a one-time compliance on the part of a PIC. Consent

590 should be an actively managed choice on the part of the data subject. A PIC must offer  
591 the data subject a mechanism to exercise ongoing preference and control over the  
592 consent given.

593  
594 E. Where a data subject enters into a contract and he or she subsequently cancels,  
595 terminates, or unsubscribes from it, the consent given to process personal data for that  
596 purpose shall also be terminated.

597  
598 1. Processing of personal data may continue should there be another lawful basis for  
599 processing the personal data based on Section 12 and 13 of the DPA, except for  
600 direct marketing .

601 2. A PIC shall have the burden of determining and proving the appropriate lawful  
602 basis or compelling reason to continue such processing and inform the data subject  
603 of the lawful basis or compelling reason for continued processing.

604  
605 **SECTION 22. Interpretation.** – Any doubt in the interpretation of any provision of this  
606 Circular shall be liberally interpreted in a manner mindful of the rights and interests of the  
607 data subject.

608  
609 **SECTION 23. Penalties.** – The processing of personal data in violation of this Circular shall  
610 carry criminal, civil, and administrative liability pursuant to the provisions of the DPA, its  
611 IRR, and related issuances of the Commission.

612  
613 **SECTION 24. Transitory Provisions.** – All affected PICs shall be given a period of ninety  
614 (90) calendar days from the effectivity of these Guidelines to comply with the requirements  
615 provided in this Circular.

616  
617 **SECTION 25. Separability Clause.** – If any portion or provision of this Circular is declared  
618 null and void, or unconstitutional, the other provisions not affected thereby shall continue to  
619 be in force and effect.

620  
621 **SECTION 26. Repealing Clause.** – All other rules, regulations, and issuances contrary to or  
622 inconsistent with the provisions of this Circular are deemed repealed or modified accordingly.

623  
624 **SECTION 27. Effectivity.** – This Circular shall take effect fifteen (15) calendar days after its  
625 publication in the Official Gazette or a newspaper of general circulation.

626  
627 **Approved:**

**JOHN HENRY D. NAGA**  
Privacy Commissioner

**LEANDRO ANGELO Y. AGUIRRE**  
Deputy Privacy Commissioner

**NERISSA N. DE JESUS**  
Deputy Privacy Commissioner

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