



1 **NPC Circular No. 2023 - XXX**

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3 **DATE : XX Month 2023**

4 **SUBJECT : GUIDELINES ON LEGITIMATE INTEREST**

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

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14 **WHEREAS**, under Section 9 of the Implementing Rules and Regulations of the DPA
15 (IRR), the NPC is mandated to develop, promulgate, review, or amend rules and
16 regulations for the effective implementation of the DPA;

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18 **WHEREAS**, Section 12 (f) of the DPA provides that personal information may be
19 processed based on a legitimate interest pursued by the PIC or by a third party to
20 whom the data is disclosed;

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22 **WHEREAS**, there is a need to clarify how a PIC may establish the existence of
23 legitimate interest, the necessity of personal information processing for such interest,
24 and the assessment of such interest in relation to a data subject's fundamental rights
25 and freedoms;

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

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31 **SECTION 1. Scope and Purpose.** – This Circular applies to all PICs and third parties
32 engaged in the processing of personal information based on legitimate interest under
33 Section 12 (f) of the DPA.

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35 This Circular provides guidelines for PICs and third parties relying on legitimate
36 interest as a lawful basis to process personal information for a specific processing
37 activity.

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39 **SECTION 2. Definition of Terms.** – The definition of terms in the DPA and its IRR,
40 as amended, as well as in existing NPC issuances, are adopted herein.

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42 **SECTION 3. General Considerations.** – Section 12 (f) of the DPA permits the
43 processing of personal information when the processing is necessary for the
44 legitimate interests pursued by the PIC or a third party to whom the data is disclosed,
45 except where such interests are overridden by fundamental rights and freedoms of
46 the data subject that require protection under the Philippine Constitution.

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- A. Legitimate interest refers to any actual and real interest, benefit, or gain that a PIC or third party may have in or may derive from the processing of specific personal information.
- B. Processing based on a legitimate interest may only be relied on for the processing of personal information. It cannot be relied upon when the processing involves sensitive personal information.
- C. The third party in Section 12 (f) of the DPA refers to any person who is not the PIC, the personal information processor (PIP), or the data subject of the specific processing activity.
- D. The fundamental rights and freedoms of data subjects protected under the Philippine Constitution and the effect and impact of the specific processing activity on such rights and freedoms shall be assessed and weighed against the legitimate interest of the PIC or third party through a legitimate interest assessment.

PROCESSING BASED ON LEGITIMATE INTEREST

SECTION 4. *Requisites for Processing Based on Legitimate Interest; Legitimate Interest Assessment.* – Processing based on legitimate interest requires the fulfillment of the following conditions:

1. The legitimate interest is established;
2. The means to fulfill the legitimate interest is both necessary and lawful; and
3. The interest is legitimate and lawful and it does not override fundamental rights and freedoms of data subjects.

There is no prescribed form for a legitimate interest assessment. The PIC or third party is not precluded from using any existing method, structure, or form, provided the PIC or third party applies the requisites for processing based on legitimate interest in its assessment.

SECTION 5. *The Legitimate Interest is Established (Purpose Test).* – A PIC shall determine the existence of a clearly established legitimate interest, including a determination of the objective of the specific processing activity.

- A. The purpose of the specific processing activity must be specific, such that it is clearly defined and not vague or overboard;
- B. The purpose of the specific processing activity must not be contrary to laws, morals, or public policy following the principle of legitimate purpose; and
- C. The claimed interest must be declared to the data subject prior to the processing or at the next practical opportunity, following the principle of transparency and the right to be informed of the data subject.

SECTION 6. *The Means to Fulfill the Legitimate Interest is both Necessary and Lawful (Necessity Test).* – The means or method chosen for the specific processing activity undertaken to accomplish the legitimate interest of the PIC or the third party should be necessary and lawful.

- 98 A. The means to fulfill the legitimate interest must be adequate, relevant,
99 suitable, necessary, and not excessive in relation to a declared and specified
100 purpose, in accordance with the principle of proportionality; and
101 B. The means chosen to accomplish the legitimate interest is itself lawful. The
102 PIC cannot violate any law in the process of accomplishing its legitimate
103 interest.

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105 **SECTION 7. *The Interest is Legitimate and Lawful and it does not Override***
106 ***Fundamental Rights and Freedoms of Data Subjects (Balancing Test).*** – A
107 determination of the effect or impact of accomplishing the legitimate interest requires
108 an analysis of the totality of the three (3) requisites. Given that the legitimate interest
109 has been established and the means to fulfill that interest is necessary and lawful, it
110 must be determined whether the processing undertaken does not override the data
111 subject’s fundamental rights and freedoms.

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113 In determining whether the legitimate interest overrides fundamental rights and
114 freedoms, the PIC or third party claiming legitimate interest as its lawful basis to
115 process shall consider the following factors, which include but are not limited to:

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- 117 1. Effect or impact of the specific processing activity on the data subject;
- 118 2. Measures implemented to protect the personal information involved in the
119 specific processing activity or to mitigate the effect or impact of the specific
120 processing activity on the data subject (e.g., privacy-enhancing technologies);
- 121 3. Availability of other means or methods to fulfill the legitimate purpose; and
- 122 4. Reasonable expectation of the data subject on the specific processing of their
123 personal information taking into consideration the surrounding
124 circumstances of each case. A PIC shall consider what a reasonable person
125 would find acceptable under the circumstances.

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127 **OBLIGATIONS OF THE PERSONAL INFORMATION CONTROLLER**

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129 **SECTION 8. *Documentation.*** – A PIC shall document the conduct and results of its
130 legitimate interest assessment.

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- 132 A. A PIC must regularly evaluate its compliance with the requisites for legitimate
133 interest as part of their regular process.
- 134 B. A PIC must keep the records of the legitimate interest assessment made as the
135 basis for relying on Section 12 (f) of the DPA to process personal information.
- 136 C. In case of an investigation or a compliance check, the NPC may require the
137 submission of the records of the legitimate interest assessment.

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139 **SECTION 9. *Further Processing of Personal Information Based on Legitimate***
140 ***Interest.*** – For personal information originally collected based on consent, further
141 processing for additional purposes that constitute a legitimate interest of the PIC may
142 be allowed in accordance with Section 6 (B) of the Circular on the Guidelines on
143 Consent.

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145 **SECTION 10. *Legitimate Interest of Third Parties.*** – A PIC shall verify the legitimate
146 interest of the third party to whom personal information may be disclosed, either
147 through its own legitimate interest assessment or on the basis of the third party’s
148 legitimate interest assessment.

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150 If a third party intends to process personal information from another PIC for its own
151 legitimate interest, such third party may be required by the PIC disclosing personal
152 information to provide the results of its legitimate interest assessment or its
153 equivalent.

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155 **SECTION 11. Sectoral Determination of Specific Legitimate Interest.** – The NPC
156 encourages industry sectors to determine common personal information processing
157 activities within their respective industries that may be based on legitimate interest.

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159 **SECTION 12. Processing Carried out by Public Authorities.** – As a general rule,
160 legitimate interest shall not apply to the processing carried out by public authorities
161 in the performance of their constitutional or statutory mandates.

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163 Legitimate interest may be considered the appropriate lawful basis for specific
164 processing activities carried out by government agencies that are not expressly
165 provided in their mandate and do not fall squarely on any of the other criteria for
166 processing under Section 12 of the DPA or as a special case under Section 4 of the
167 DPA. Legitimate interest may apply as lawful basis for ancillary processing activities
168 performed in the ordinary course of business. In such cases, the PIC must conduct a
169 legitimate interest assessment.

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171 **SECTION 13. Interpretation.** – Any doubt in the interpretation of any provision of
172 this Circular shall be liberally interpreted in a manner mindful of the rights and
173 interests of the data subject.

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175 **SECTION 14. Penalties.** – The processing of personal data in violation of this
176 Circular shall carry criminal, civil, and administrative liability pursuant to the
177 provisions of the DPA, its IRR, and related issuances of the Commission.

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179 **SECTION 15. Separability Clause.** – If any portion or provision of this Circular is
180 declared null and void, or unconstitutional, the other provisions not affected thereby
181 shall continue to be in force and effect.

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183 **SECTION 16. Repealing Clause.** – All other rules, regulations, and issuances
184 contrary to or inconsistent with the provisions of this Circular are deemed repealed
185 or modified accordingly.

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187 **SECTION 17. Effectivity.** – This Circular shall take effect fifteen (15) calendar days
188 after its publication in the Official Gazette or a newspaper of general circulation.

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190 **Approved:**

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JOHN HENRY D. NAGA

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