



Philippines: Data Privacy for Health Information in the Time of Corona

The threat of the COVID-19 pandemic and the implementation of contact tracing as a means to quell the spread of the disease, has triggered questions about the appropriate procedure for the handling of personal information of individuals who may have been infected or who may have come in contact with a known COVID-19 patient. In the Philippines, enterprises such as hospitals and airlines, including employers and organizations providing critical services, are being relied upon by the government to help with contact tracing. Information obtained from individuals would typically include the person's health information, travel history, employment status, nationality, frequented places, and activities. Questions have also been raised on the legalities of building administrators requesting individuals entering buildings to provide their health information and travel history.

Philippine privacy laws

The Philippines has a privacy law, the Data Privacy Act of 2012 ("DPA") that regulates the collection and processing of personal data. Its basic framework and concepts are similar to those of the GDPR. Personal data may be collected and processed provided there is a lawful criterion for the activity, such as the consent of the data subject.

The statute distinguishes sensitive personal information ("SPI") from personal information, and provides more protection for SPI. For example, the lawful criteria available for the collection and processing of SPI are more restrictive than those for personal information. Personal information would include the name of the individual, his contact details, and generally, his frequented places and activities. SPI, on the other hand, would include health information, age, nationality, government-issued ID numbers, and data that may enable fraud.

Lawful collection of personal information

In relation to COVID-19 cases, personal information can be collected, processed, and disclosed even without consent, if done for purposes of protecting the life and health of individuals and of responding to a national emergency. For SPI, however, the collection and processing must either be based on consent, or allowed under existing laws and regulations, or necessary for the purpose of medical treatment. An adequate level of protection of SPI, which should generally be greater than the level of protection of personal information, must also be ensured.

In this regard, under Republic Act No. 11332, or the "Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act," it is mandatory for hospitals, clinics, laboratories, establishments, workplaces, airports, schools, and government agencies, among others, to report incidences of identified notifiable diseases and provide all information required by the Department of Health (DOH). The DOH has identified COVID-19 as a notifiable disease through the issuance of the "Interim Guidelines on Contact Tracing for Confirmed 2019 Novel Coronavirus Acute Respiratory Disease (2019-nCov ARD) Cases" ("Interim Guidelines"). With this, and considering that the collection of information on COVID-19 patients will be necessary for their medical treatment and the medical treatment of persons who may have been infected by them, the collection, processing, and disclosure of SPI of affected individuals would be justifiable even without their consent, provided that the processing and disclosure are for those purposes. The Philippine National Privacy Commission ("NPC") has issued a reminder that the

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collection and disclosure of the personal information of COVID-19 patients and their close contacts will be a balancing act where the DOH will have to make crucial decisions to protect the privacy rights of infected individuals while ensuring that the public remains sufficiently informed to help contain the spread of the disease. According to Commissioner Liboro of the NPC, “during times of emergency, it is best to adhere to global best practices when assessing what type of patient personal information to disclose” and that the DOH “need(s) to consider:

- 1) The potential harm or distress to the patient arising from the disclosure.
- 2) The potential damage to trust in doctors and health institutions in general.

and weigh it versus:

- 1) The potential harm to the public if the information is not disclosed.
- 2) The potential benefits to individuals and society arising from the release of information.”

Thus, according to the NPC, only pertinent information necessary in facilitating contact tracing should be collected, such as but not limited to travel history and frequented locations, and that only the information required to enable contact tracing must be disclosed to the public. Those organizations that collect such personal information must also ensure continued compliance with the requirements of the DPA, such as the implementation of appropriate security measures to protect the collected personal information from unauthorized access or disclosure and ensure that the personal information will not be used for unauthorized purposes. Any personal information should also be deleted or destroyed when no longer necessary for the purposes for which they were collected, *i.e.*, contact tracing or medical treatment.

Procedure adopted by the DOH

In order to provide guidance to all entities who are taking the necessary steps to address the COVID-19 pandemic, the DOH issued the Interim Guidelines, which require only the collection of minimal information on COVID-19 patients and their close contacts. Also, any disclosure of information to the public should not positively identify the individuals to protect their privacy and ensure their cooperation. This is consistent with the NPC’s position that “[i]f people believe that their identities will be released to the public when they come out for testing, they may be discouraged to come out—making it more difficult for the DOH and the rest of the inter-agency task force to identify more COVID-19 cases.” Thus, the DOH has instructed hospitals and medical institutions to collect only the names, addresses, date of birth, age, gender, nationality, contact details of the individuals, and their travel history, along with other non-identifiable information, and ensure that individuals will not be identified in any disclosure released to the public. In addition, the Interim Guidelines also provide that once there is evidence of sustained community transmission (*i.e.*, 3rd or subsequent transmission) in a particular area, contact tracing as a means to control the spread of the disease should be terminated. At this point, the community is instructed to adopt other measures at containing the spread of the disease – from social distancing and mandatory closure of local businesses to outright restriction on land, air, and sea travel.

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