

Ontario: Information and Privacy Commissioner
(Commissionaire à l'information et à la protection de la
vie privée)

APPLICATION FORM FOR ACCREDITATION AS A DATA PROTECTION AUTHORITY

Application to the Credentials Committee for accreditation as a data protection authority pursuant to the resolutions adopted at the 23rd International Conference of Data Protection and Privacy Commissioners at Paris on 25th September 2001.

Notes:

- (a) Please complete application in French or English.
- (b) Please keep answers brief and to the point.
- (c) Please ensure that all 33 questions are answered
- (d) If you retype the form, please include the numbered questions with your answers. It is possible to avoid such retyping by getting the electronic application form in French or in English upon request by e mail at credentials@privacy.org.nz .

Details of applicant

1. Name and postal address of authority

Information and Privacy Commissioner/Ontario 80 Bloor Street West, Suite 1700, Toronto, Ontario Canada M5S 2V1

2. Contact person for this application:

(a) Name

Ann Cavoukian, Ph.D., Commissioner

(b) Email address

ann.cavoukian@ontario.ca

(c) Direct telephone number

(416) 926-9944

(d) Fax contact

(416) 926-9944

Type of application

3. The application is for accreditation as:

- (a) national Authority NO
- (b) sub-national Authority YES

(c) Authority within an international, if yes which one.....NO

Description of applicant

4. Description of Authority (e.g. commissioner, commission, board etc)

Commissioner – Information and Privacy Commissioner/Ontario

5. Is the Authority a public body? YES

6. Geographical jurisdiction

The province of Ontario, Canada

7. Sectoral coverage (i.e. does the applicant's jurisdiction cover the entire public and private sectors? If only part of a sector or if there are significant activities not covered, please specify)

Legislative mandate covers the provincial and municipal public sectors. Legislation is under development to extend privacy coverage to include all other sectors (e.g. health, non-profit and private sectors)

8. Is the role of the Authority mainly concerned with data protection and privacy?

YES (also responsible for freedom of information)

Legal basis

9. Title of law under which the Authority is constituted

Freedom of Information and Protection of Privacy Act (FIPPA) enabling legislation
Municipal Freedom of Information and Protection of Privacy Act

10. Is this principally a data protection law?

Yes (a data protection & freedom of information law)

11. Status of the law (e.g. statute, regulation, executive order)

Statute with accompanying Regulations

12. Which body made the law?

Legislative Assembly of Ontario

13. What body has the power to amend or revoke the law?

Legislative Assembly of Ontario

Autonomy and independence

14. Who appoints member(s) of the Authority? (Please explain if a different process applies to the presiding member from other Authority members in this question and in subsequent questions.)

The Commissioner is appointed by the Lieutenant Governor in Council (Cabinet) on the address of the Legislative Assembly. The Commissioner appoints Assistant Commissioners and any other staff members.

15. What process is followed?

After a public recruitment process with associated interviews, an all-party committee of the Legislative Assembly makes a recommendation regarding the Commissioner to the Lieutenant Governor in Council.

16. For what term are appointments made?

The Commissioner shall hold office for a term of five years and may be reappointed for a further term or terms.

17. Does the law under which the Authority operates explicitly state that it acts independently?

YES – The Commissioner is an officer of the Legislature.

18. May the member(s) be removed before expiry of their term?

YES

19. If yes, who may remove members of the Authority before expiry of their term?

The Lieutenant Governor in Council on the address of the Legislative Assembly.

20. Are there limited reasons specified in the statute, or in another law, providing the permitted grounds for removal?

Yes, *FIPAA* s. 4 (3): The Commissioner shall hold office for a term of five years and may be reappointed for a further term or terms, but is removable at any time for cause by the Lieutenant Governor in Council on the address of the Assembly

21. What are the grounds for removal?

The Commissioner is removable at any time for cause.

22. Does the Authority possess the following powers (briefly describe and give statutory references)

(e) to initiate an investigation with seeking provision

YES (with respect to an appeal of an access to information request – which could include access to one's own personal information). There is an implied authority to investigate privacy complaints.

FIPPA s. 52 The Commissioner may conduct an inquiry to review the head's decision if, (a) the Commissioner has not authorized a mediator to conduct an investigation under section 51; or (b) the Commissioner has authorized a mediator to conduct an investigation under section 51 but no settlement has been effected.

- (f) to report to the head of State, head of Government or legislature

YES

FIPPA s. 58 The Commissioner shall make an annual report to the Speaker of the Assembly who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next session.

- (g) make public statements YES

FIPPA s. 59 (a) The Commissioner may offer comment on the privacy protection implications of proposed legislative schemes or government programs.

(c) FIPPA s. 59 The Commissioner may conduct public education programs and provide information concerning this Act and the Commissioner's role and activities;

23. Does the Authority (and its staff) have immunity from legal suit for actions performed in the course of their duties? YES

FIPPA s. 52 (12) No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his or her compliance with a requirement of the Commissioner under this section.

24. Applicants may list any other measures set out in the statute or in other laws which guarantee the Authority's independence (for example if the law provides specifically that the Authority's finances are protected).

FIPPA s. 5 (1) The Commissioner shall work exclusively as Commissioner and shall not hold any other office under the Crown or engage in any other employment.

FIPPA s. 5 (2) The Public Service Act does not apply to the Commissioner (e.g. staff are not civil servants).

FIPPA s. 6 (2) The salary of the Commissioner shall not be reduced except on the address of the Assembly.

FIPPA s. The Commissioner is entitled to be paid reasonable travelling and living expenses while absent from his or her ordinary place of residence in the exercise of any functions under this Act

FIPPA s. 8 (1) Subject to the approval of the Lieutenant Governor in Council, the Commissioner may employ mediators and any other officers and employees the Commissioner considers necessary for the efficient operation of the office and may determine their salary and remuneration and terms and conditions of employment.

FIPPA s. 9 (1) The Commissioner may lease any premises and acquire any equipment and supplies necessary for the efficient operation of the office of the Commissioner.

The Board of Internal Economy – an all-party Legislative Committee, approves the Commissioner's budget. The budget does not need governmental approval.

Consistency with international instruments

25. Does the Authority explicitly implement any international instrument (for example if the law under which the Authority operates specifies that it implements such international instrument)? NO

If "yes", which of the following does it principally implement?

- | | | |
|-----|--|--------|
| (a) | OECD Guidelines (1980) | YES/NO |
| (b) | (i) Council of Europe Convention No 108 (1981) | YES/NO |
| | (ii) Council of Europe Additional Protocol (8 November 2001) | YES/NO |
| (c) | UN Guidelines (1990) | YES/NO |
| (d) | EU Directive (1995) | YES/NO |

26. Does the law instead, or additionally, implement any general or specific international instrument? (If so, list the international body and the instrument)

No

27. Have significant questions been raised about the extent to which the law is consistent with the international instruments, which are claimed to be implement in answer to questions 25 and 26? (Applicants should supply further information to assist the Committee including a description of any measures under way to address these inconsistencies.)

No

Appropriate functions

28. Does the Authority possess functions in any of the following areas (briefly describe and give statutory references):

- (a) compliance (e.g. audit, inspection)

YES (with respect to an appeal of an access to information request – which could include access to one's own personal information). Implied ability to investigate.

FIPPA s. 52 – In an inquiry, the Commissioner may require to be produced to the Commissioner and may examine any record that is in the custody or under the control of an institution, despite Parts II and III of this Act or any other Act or privilege, and may enter and inspect any premises occupied by an institution for the purposes of the investigation.

FIPPA s. 59 The Commissioner may, (a) offer comment on the privacy protection implications of proposed legislative schemes or government programs.

FIPPA 58. (1) The Commissioner shall make an annual report, in accordance with subsection (2), to the Speaker of the Assembly who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next session. 1987, c. 25, s. 58(1).

Contents of report -- s. 58(2)

(2) A report made under subsection (1) shall provide a comprehensive review of the effectiveness of this Act and the Municipal Freedom of Information and Protection of Privacy Act in providing access to information and protection of personal privacy including,

(a) a summary of the nature and ultimate resolutions of appeals carried out under subsection 50(1) of this Act and under subsection 39(1) of the Municipal Freedom of Information and Protection of Privacy Act;

(b) an assessment of the extent to which institutions are complying with this Act and the Municipal Freedom of Information and Protection of Privacy Act; and

(c) the Commissioner's recommendations with respect to the practices of particular institutions and with respect to proposed revisions to this Act, the Municipal Freedom of Information and Protection of Privacy Act and the regulations under them.

(b) approvals (e.g. prior-checking, notification) **YES**

FIPPA s. 59 (c) Authorize the collection of personal information otherwise than directly from the individual.

(c) redress for individuals (e.g. complaints, conciliation enforcement)

YES (with respect to an appeal of an access to information request – which could include access to one's own personal information) There is an implied right to complain about invasions of privacy.

FIPPA s. 50 Right to appeal -- (1) A person who has made a request for, (a) access to a record under subsection 24 (1); (b) access to personal information under subsection 48 (1); or (c) correction of personal information under subsection 47 (2), or a person who is given notice of a request under subsection 28 (1) may appeal any decision of a head under this Act to the Commissioner

(d) sanctions available to Authority (for example, prosecution and enforcement)

NO

FIPPA s. 61 Offences – Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine not exceeding \$5,000.

61(3) A prosecution shall not be commenced under clause (1)(d), (e) or (f) without the consent of the Attorney General.

(e) guidance (e.g. compliance advice) **YES**

FIPPA s. 59 (a) The Commissioner may offer comment on the privacy protection implications of proposed legislative schemes or government programs.

(f) public education **YES**

FIPPA s. 59 (e) The Commissioner may conduct public education programs and provide information concerning this Act and the Commissioner's role and activities

- (g) policy advice for government YES

FIPPA s. 59 (a) The Commissioner may offer comment on the privacy protection implications of proposed legislative schemes or government programs.

- (h) studies or research (e.g. into developing technologies, privacy issues) YES

FIPPA s. 59 (d) The Commissioner may engage in or commission research into matters affecting the carrying out of the purposes of this Act

Additional comments

29. Applicants are invited to offer any further comments that they wish.

The following is a link to draft Ontario *Privacy of Personal Information Act, 2002* which would extend the Commissioner's mandate to the health, non-profit and private sectors.
<http://www.cbs.gov.on.ca/mcbs/english/pdf/56XSMB.pdf>

Other materials

30. List any attachments which will accompany the application as an electronic attachment or to follow by post.

Hansard report of the Commissioner's appointment:
<http://hansardindex.ontla.on.ca/hansardeissue/36-2/1030a.htm>

31. If law under which the Authority operates is accessible on the Internet, please give the reference

URL: http://192.75.156.68/DBLaws/Statutes/English/90f31_e.htm (*Provincial Act*)
http://192.75.156.68/DBLaws/Statutes/English/90f31_e.htm (*Municipal Act*)

32. If a recent annual report of the Authority (or a similar recent publication outlining typical activities) is available on the Internet, please give the reference

URL: http://www.ipc.on.ca/english/pubpres/ann_reps/ar-00/ar-00e.pdf (2000)

Research use

33. With the consent of applicants, the Committee proposes to make copies of the applications available to appropriate researchers approved by the Committee to facilitate a study on data protection. Please indicate whether you agree to this use:

- I agree to this application being released to a researcher YES

Making the application

The application should be emailed to the credentials committee at credentials@privacy.org.nz

If sent as an email attachment it should be in M/S Word.

If unable to email the application, it should be posted to:

Credentials Committee
C/- Privacy Commissioner
P O Box 466
Auckland
New Zealand

The Committee needs access to a copy of the law under which the Authority is constituted. This need not be supplied in hard copy if it is available on the Internet and listed at question 31. If the law itself is not in English or French, it will be useful to supply an English or French summary or translation if one exists.

Use of information

The information in this form will be used for processing the application and will be disclosed to members of the committee and their staff (being the commissioners from New Zealand, France and the United Kingdom) and future committees. It may be also disclosed also to the Data Protection Authorities, which participate to the international conference and approved researchers. Any personal data contained in the form is available for access and correction in accordance with the applicable data protection laws of current and future committees. In the first instance it is subject to the New Zealand Privacy Act 1993.

ACCREDITATION OF DATA PROTECTION AUTHORITY
CHECKLIST FOR THE CREDENTIALS SUB-GROUP

1 Name of Authority

**Information and Privacy
Commissioner/Ontario, Canada**

2 Does the authority have clear and wide ranging data protection functions covering a broad area of economic activity (eg not just an advising body or a body operating in a narrow field such as medical privacy)?

Yes

Notes

3 Legal Basis.
Is the authority a public body established on an appropriate legal basis (eg by statute or regulation)?

Yes

Notes

4 Autonomy and Independence?
Is the authority guaranteed an appropriate degree of autonomy and independence to perform its functions (eg the power to make public statements and protection from removal from office)?

Yes

Notes

5 Consistency with International Instruments.
Is the law under which the authority operates compatible with at least one of the international instruments dealing with data protection and privacy (eg EU Directive, OECD Guidelines, Council of Europe Convention)?

Yes

Notes
Does not explicitly implement any international instrument. However, is compatible with approach of OECD.

6 Appropriate Functions.
Does the authority have an appropriate range of functions with the legal powers necessary to perform those functions (eg the power to receive and investigate complaints from individuals without seeking permission)?

Yes

Notes

7 Does the Sub-group recommend accreditation?

Yes

Notes

8 If accreditation is recommended what is the accreditation as?

Authority within a limited sub-national territory

Notes

9 If accreditation is as an authority within an international/supranational body does the recommendation include voting rights?

Not applicable

Notes

10 If accreditation is not recommended does the Sub Group recommend that accreditation is refused or is more information needed before a decision can be made?

Not applicable

Notes

11 If accreditation is not recommended and the application is from an authority with narrow functions does the Sub Group recommend that, at the discretion of the conference host, observer status is granted?

Not applicable

Notes

If more information is required what is this:

Signed on behalf of the Sub-
group:

Blair Stewart

Date: **22 May 2002**

Marie Georges

Date: **9 juillet 2002**

Date:

Note: 2 signatures required for recommendations for accreditation.
3 signatures required for recommendations for refusal