

Saskatchewan: Information and Privacy Commissioner



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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

Office of the Information and Privacy Commissioner of Saskatchewan
503 – 1801 Hamilton Street
Regina, Saskatchewan, CANADA S4P 4B4

2. Contact person for this application:

- (a) Name

R. Gary Dickson, Q.C.

- (b) Email address

rdickson@ipcsk.ca

- (c) Direct telephone number

306 768 1039

- (d) Fax contact

306 768 1039

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)

Information and Privacy Commissioner

5. Is the Authority a public body? YES/

6. Geographical jurisdiction

Province of Saskatchewan, 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)

Public Sector including provincial government departments, boards, commissions and agencies as well as local authorities including municipalities, regional health authorities, schools, universities and colleges . In addition, our OIPC also covers the private health sector including health professionals and disciplines (both members and regulatory

8. Is the role of the Authority mainly concerned with data protection and privacy? The legislation addresses both access to information and protection of privacy.

Legal basis

9. Title of law under which the Authority is constituted

The Freedom of Information and Protection of Privacy Act

10. Is this principally a data protection law? And access to information YES/

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

Statute of Province of Saskatchewan

12. Which body made the law?

Legislative Assembly of Saskatchewan

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

Legislative Assembly of Saskatchewan

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.)

Legislative Assembly of Saskatchewan

15. What process is followed?

Open Competition – Publicly Advertised

16. For what term are appointments made?

Five (5) years

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

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?

Legislative Assembly of Saskatchewan

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

Yes

21. What are the grounds for removal?

Incapacity, neglect of duty, misconduct.

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

(e) to initiate an investigation with seeking provision YES

The Freedom of Information and Protection of Privacy Act

33. The commissioner may:

(a) offer comment on the implications for privacy protection of proposed legislative schemes or government programs;

(b) after hearing the head, recommend that a government institution:

(i) cease or modify a specified practice of collecting, using or disclosing information that contravenes this Act; and

(ii) destroy collections of personal information that is collected in contravention of this Act;

(c) in appropriate circumstances, authorize the collection of personal information in a manner other than directly from the individual to whom it relates;

(d) from time to time, carry out investigations with respect to personal information in the possession or under the control of government institutions to ensure compliance with this Part.

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

The Freedom of Information and Protection of Privacy Act

62(1) Within three months after the end of each fiscal year, the commissioner shall prepare and submit an annual report to the Speaker of the Assembly, and the Speaker shall cause the report to be laid before the Assembly in accordance with *The Tabling of Documents Act*.

(2) The annual report of the commissioner is to provide details of the activities of the office in relation to the commissioner's responsibilities pursuant to this Act during that fiscal year and, in particular, concerning any instances where the commissioner's recommendations made after a review have not been complied with.

(g) make public statements YES

The Freedom of Information and Protection of Privacy Act

s. 33. The commissioner may:

(a) offer comment on the implications for privacy protection of proposed legislative schemes or government programs;

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

Yes

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).

The Freedom of Information and Protection of Privacy Act

47(1) The commissioner is not compellable to give evidence in a court or in a proceeding of a judicial nature concerning any information that comes to the knowledge of the commissioner in the exercise of the powers, performance of the duties or carrying out of the functions of the commissioner pursuant to this Act.
(2) subsection (1) applies, with any necessary modification, to the staff of the commissioner

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, but implicitly codifies OECD guidelines without attribution.

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

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

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

Not explicitly – although Part IV reflects modified OECD Guidelines.

27. Have significant questions been raised about the extent to which the law is consistent with the international instruments which are claimed to be implemented 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.)

Not to our knowledge by anyone outside of our office.

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

The Freedom of Information and Protection of Privacy Act

54(1) Notwithstanding any other Act or any privilege that is available at law, the commissioner may, in a review:

- (a) require to be produced and examine any record that is in the possession or under the control of a government institution; and
- (b) enter and inspect any premises occupied by a government institution.

(2) For the purposes of conducting a review, the commissioner may summon and enforce the appearance of persons before the commissioner and compel them:

- (a) to give oral or written evidence on oath or affirmation; and
- (b) to produce any documents or things;

that the commissioner considers necessary for a full review, in the same manner and to the same extent as the court.

(3) For the purposes of subsection (2), the commissioner may administer an oath or affirmation.

The Health Information Protection Act

46(1) Notwithstanding any other Act or any privilege that is available at law, the commissioner may, in a review, require to be produced and examine any personal health information that is in the custody or control of a trustee.

(2) For the purposes of conducting a review, the commissioner may summon and enforce the appearance of persons before the commissioner and compel them to give oral or written evidence on oath or affirmation and to produce any documents or things that the commissioner considers necessary for a full review, in the same manner and to the same extent as the court.

(3) For the purposes of subsection (2), the commissioner may administer an oath or affirmation.

(b) approvals (e.g. prior-checking, notification) NOT by statute by by practice and procedure of the OIPC

details: We receive and review PIAs from public bodies

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

The Freedom of Information and Protection of Privacy Act

49(1) Where:

- (a) an applicant is not satisfied with the decision of a head pursuant to section 7, 12 or 37;
- (b) a head fails to respond to an application for access to a record within the required time; or
- (c) an applicant requests a correction of personal information pursuant to clause 32(1)(a) and the correction is not made;

the applicant may apply in the prescribed form and manner to the commissioner for a review of the matter.

(2) An applicant may make an application pursuant to subsection (1) within one year after being given written notice of the decision of the head or of the expiration of the time mentioned in clause (1)(b).

(3) A third party may apply in the prescribed form and manner to the commissioner for a review of a decision pursuant to section 37 to give access to a record that affects the interest of the third party.

(4) A third party may make an application pursuant to subsection (3) within 20 days after being given notice of the decision.

- (d) sanctions available to Authority (for example, prosecution and enforcement) NO

details:

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

The Freedom of Information and Protection of Privacy Act

33(b) after hearing the head, recommend that a government institution:

- (i) cease or modify a specified practice of collecting, using or disclosing information that contravenes this Act; and
- (ii) destroy collections of personal information that is collected in contravention of this Act;
- (c) in appropriate circumstances, authorize the collection of personal information in a manner other than directly from the individual to whom it relates;

- (f) public education YES

The Freedom of Information and Protection of Privacy Act

45(b) conduct public education programs and provide information concerning this Act and the commissioner's role and activities ;

- (g) policy advice for government YES

The Freedom of Information and Protection of Privacy Act

33. The commissioner may:

- (a) offer comment on the implications for privacy protection of proposed legislative schemes or government programs;

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

The Freedom of Information and Protection of Privacy Act

45. The commissioner may:

- (a) 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.

Examples of our investigative work are accessible at our website: <http://www.gov.sk.ca> under Reports such as our report on the Prevention Program for Cervical Cancer.

Other materials

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

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

URL: <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/F22-01.pdf>
<http://www.qp.gov.sk.ca/documents/english/Statutes/Statutes/H0-021.pdf>

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.oipc.sk.ca/Web%20Site%20Documents/2003%20-%202004%20Annual%20Report.pdf>

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 of
Saskatchewan**

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

No

Don't know

Notes

**Similar to other Canadian
Provincial Information &
Privacy Commissioners
already accredited**

3 Legal Basis.

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

Yes

No

Don't know

Notes

Statute

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

No

Don't know

Notes

**All the usual protections
present**

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

No

Notes

**In the Canadian tradition
the law does not explicitly
refer to an international
instrument, but can clearly
be seen as a typical OECD
law**

Don't know

- 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

No

Don't know

Notes

The usual privacy commissioner-type functions present.

In common with other Canadian commissioners with exclusively public sector jurisdiction, the law confers a fairly weak "ombudsman-like" role upon the Commissioner in the privacy area, rather than conferring powers to order compliance or to enforce through the courts. However, it seems a little late to question the weakness of this model given that other Canadian commissioners are already accredited (e.g. we were aware of the relative weakness of this model when we accredited the Manitoba Ombudsmen). I think this Ombudsmen-type recommendatory approach is OK for dealing with public institutions (as here and in Manitoba) but would be more likely to question it for the private sector. Here the IPC does have jurisdiction over health organisations.

- 7 Does the Sub-group recommend accreditation?

Yes

No

Notes

- 8 If accreditation is recommended what is the accreditation as?

Notes

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