

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 23<sup>rd</sup> International Conference of Data Protection and Privacy Commissioners at Paris on 25<sup>th</sup> 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](mailto:credentials@privacy.org.nz).

Details of applicant

1. Name and postal address of authority

College bescherming persoonsgegevens (CBP)  
Prins Clauslaan 20  
P.O. Box 93374  
2509 AJ The Hague  
The Netherlands

2. Contact person for this application:

(a) Name

Anne-Marije Fontein, international officer

(b) Email address

~~anne.marije.fontein@cbp.nl~~

(c) Direct telephone number

~~+31 (0)70 533 1301~~

(d) Fax contact

~~+31 (0)70 533 1301~~

Type of application

3. The application is for accreditation as:

(a) national Authority

YES/NO

(b) sub-national Authority YES/NO

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

#### Description of applicant

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

The Authority is a collegiate body, consisting of 3 commissioners

5. Is the Authority a public body? YES/NO

6. Geographical jurisdiction

The Netherlands

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)

Both the public and private sector are covered, excluding the secret service.

8. Is the role of the Authority mainly concerned with data protection and privacy?  
YES/NO

#### Legal basis

9. Title of law under which the Authority is constituted

Wet bescherming persoonsgegevens (WBP, Dutch Data Protection Act)

10. Is this principally a data protection law? YES/NO

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

Statute

12. Which body made the law?

Ministry of Justice and Parliament

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

Ministry of Justice and Parliament

## 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 members are appointed by Royal Decree, on the recommendation of the Minister of Justice (see article 53(3) WBP).

15. What process is followed?

There is a selection committee consisting of two representatives of the Authority, a representative of the Ministry of Justice and a representative of the Advisory Board of the Authority. The committee recommends a new member to the Minister of Justice.

16. For what term are appointments made?

The president is appointed for six years, the two other members are appointed for four years.

17. Does the law under which the Authority operates explicitly state that it acts independently? YES/NO (see article 52(2) WBP)

18. May the member(s) be removed before expiry of their term? YES/NO

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

The Supreme Court

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

Yes; the members enjoy the same legal position as judges. They can be removed in exceptional circumstances only (see article 54(2) WBP).

21. What are the grounds for removal?

The main grounds are:

- conviction for a crime or detention
- placement under legal restraint and declaration of bankruptcy or having other serious debts
- acting or failure to act causing serious harm to the work of the Authority

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

- (e) to initiate an investigation with seeking provision YES/NO

details: article 60 WBP: the Authority, acting in its official capacity or at the request of an interested party, may initiate an investigation into the manner in which the provisions with regard to the processing of data laid down by law are being applied.

- (f) to report to the head of State, head of Government or legislature YES/NO

details: article 51(2) WBP: There is a duty to ask the advice of the Authority on bills and draft texts of general administrative regulations relating entirely or substantially to the processing of personal data. Furthermore, the Authority, acting in its official capacity, has the possibility to advise the head of Government or the legislature on bills and draft texts of general administrative regulations, or on any other matter. This follows from its general task laid down in article 51(1) WBP, stating that the Authority shall oversee the processing of personal data in accordance with the law. The annual report is presented to the Minister of Justice (article 58 WBP).

- (g) make public statements YES/NO

details: the General Administrative Regulations Act (Algemene wet bestuursrecht) and the Act on the Publicity of the Administration (Wet openbaarheid van bestuur) lay down the rules in this respect. If necessary for the performance of its functions, the Authority is obliged to provide the public with information (article 8 of the Act on the Publicity of Administration).

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

No

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).

#### 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)? YES/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)

Yes, the Council of Europe Convention No 108 (1981)

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/NO

Details: see answer to question 22 (e). Furthermore: Article 61 WPB: the Authority is authorised to enter premises without the consent of the resident. Thus, the Authority is allowed to investigate or audit any processing without the consent of the controller and without priorly informing the controller. It can do this upon request of an interested party or acting in its official capacity.

(b) approvals (e.g. prior-checking, notification) YES/NO

Details: article 27 WBP stipulates the obligation to notify a processing to the Authority. The Authority does not give a prior approval upon receipt of the notification, but can start an investigation in case the notification gives cause to that. Article 31 stipulates the situations in which the Authority has to conduct a preliminary investigation.

(c) redress for individuals (e.g. complaints, conciliation enforcement) YES/NO

Details: individuals can request information, file a complaint or request mediation of the Authority. Article 60 WBP gives the Authority the powers to investigate (see answers to questions 22(e) and 28(a)).

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

Details: Article 65 WBP allows the Authority to apply administrative measures for the enforcement of obligations of the controller under the WBP. This means that, if the Authority's decisions are not followed, it has the option of either enforcing the decision itself or of imposing a fine for the time the unlawful practice continues. Article 66 WBP stipulates that the Authority can give an administrative fine for a breach of the regulations regarding notification.

(e) guidance (e.g. compliance advice) YES/NO

Details: The Authority advises organisations upon request about the processing of personal data. Also, after an investigation, it communicates its conclusions and recommendations to the controller.

(f) public education YES/NO

Details: The public is informed via a website, information brochures, a daily help desk by telephone, etc. Furthermore, Commissioners and members of the secretariat give lectures and speeches for media, at conferences, universities etc.

(g) policy advice for government YES/NO

Details: see answer to 22(f)

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

YES/NO

Details: about 40 % of the work of the Authority is dedicated to research activities into various topics related to privacy in different areas of society. For example, studies have been done on privacy enhancing technologies, list broking, information technologies in the health sector etc.

#### Additional comments

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

#### 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: [www.cbpweb.nl](http://www.cbpweb.nl) (English section)

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: [www.cbpweb.nl](http://www.cbpweb.nl) (English section)

#### 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/NO

#### Making the application

The application should be emailed to the credentials committee at [credentials@privacy.org.nz](mailto: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

**College bescherming persoonsgegevens  
(CBP), The Netherlands**

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  
**EU Directive  
CoE Convention**

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?

**National authority (within the UN criteria)**

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: **23 May 2002**

*Jonathan Bamford*

Date: 12/07/02

Date:

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