

APPLICATION FORM FOR ACCREDITATION AS A DATA PROTECTION AUTHORITY

NEW ZEALAND APPLICATION

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.

Details of applicant

1. Name and postal address of authority

Office of the Privacy Commissioner  
P O Box 466  
Auckland  
New Zealand

2. Contact person for this application:

- (a) Name: Blair Stewart  
(b) Email address: ~~blair.stewart@privacy.org.nz~~  
(c) Direct telephone number: +~~64 9 308 8334~~  
(d) Fax contact: +~~64 9 308 8334~~

Type of application

3. The application is for accreditation as a national Authority

Description of applicant

4. Description of Authority: Commissioner  
5. Is the Authority a public body? YES  
6. Geographical jurisdiction: New Zealand  
7. Sectoral coverage: Entire public and private sectors  
8. Is the Authority's role mainly concerned with data protection and privacy? YES

Legal basis

9. Title of law under which the Authority is constituted: Privacy Act 1993

10. Is this principally a data protection law? YES
11. Status of the law: Statute
12. Which body made the law? New Zealand Parliament
13. What body has the power to amend or revoke the law? NZ Parliament

#### Autonomy and independence

14. Who appoints the Authority?

The Privacy Commissioner is appointed by the Governor-General on the recommendation of the Minister of Justice (Privacy Act 1993, s.12). The Governor-General is the Sovereign's representative in New Zealand.

15. What process is followed?

The statute does not specify the process in detail. Essentially, the Minister of Justice identifies a person suitable to be appointed and this nominee is approved by a Cabinet Committee before the name is submitted to the Governor-General for appointment. Some governments prefer to solicit candidates whereas others will place public notices in the newspaper seeking applications. Typically several people will be interviewed for the position by officials before the Minister makes a recommendation. For such an appointment the governing parties would usually consult the opposition parties in Parliament – although there is no law requiring this to be done.

16. For what term are appointments made?

A fixed term not exceeding 5 years. The appointee is eligible for reappointment.

17. Does the law under which the Authority operates explicitly state that it acts independently? NO

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 Governor-General

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?

"Inability to perform the duties of the office, bankruptcy, neglect of duty or misconduct, proved to the satisfaction of the Governor-General" (Privacy Act, s.18).

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

- (a) To initiate an investigation without seeking permission YES

Privacy Act, s.69(2) states that the Commissioner may commence an investigation of any action that appears to be an interference with the privacy of an individual either on a complaint "or the Commissioner's own initiative".

- (b) To report to the head of State, head of Government or legislature YES

See Privacy Act, ss.13(1)(c), (e), (f), (l), (n), (o), (p), (q), (r), 24, 26 and 61(2). Under those various provisions the Commissioner generally reports to the "responsible Minister", who is the Minister of Justice. In certain matters the Commissioner is authorised to report to the Prime Minister. The Commissioner's annual report and report on a periodic review of the operation of the Act, are presented to Parliament by the Minister. There is no provision for the Commissioner to report directly to the Head of State (HM Queen Elizabeth II) as this is not constitutionally usual since the Head of State merely acts on the advice of the Government. There is no provision for the Privacy Commissioner to report directly to Parliament although occasionally he reports to a select committee of Parliament at its request or makes a submission in the public consultation process on a bill going through Parliament.

- (c) Make public statements YES

Privacy Act, s.13(1)(h) empowers the Commissioner "to make public statements in relation to any matter affecting the privacy of the individual or of any class of individual".

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

YES (Privacy Act s.115).

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).

Privacy Act, s.19, provides that the Commissioner is not to be a member of Parliament or of a local authority, and must not, without the approval of the

Minister of Justice in each particular case, hold any office of trust or profit or engage in any occupation for a reward outside the duties of the Commissioner's office.

Parliament votes a separate appropriation of funds for the Commissioner. This money cannot be taken by the Ministry of Justice for other purposes.

#### Consistency with international instruments

25. Does the Authority explicitly implement any international instrument? YES

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     | NO  |
| (c) | UN Guidelines (1990)                           | NO  |
| (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)

The Privacy Act requires the Commissioner, in the exercise of powers, to "consider any developing general international guidelines relevant to the better protection of individual privacy" (Privacy Act, s.14).

When monitoring compliance with the public register privacy principles, the Commissioner is directed to have particular regard to the Council of Europe Recommendations on Communications to Third Parties of Personal Data held by Public Bodies (Recommendation R(91)10) (Privacy Act, s.13(1)(e)).

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?

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 |
|-----|-------------------------------------|-----|

The Commissioner can audit an agency for compliance with the information privacy principles when requested to do so by that agency, and has the power to initiate an investigation into an action which

appears to be an interference with the privacy of an individual on the Commissioner's own initiative (Privacy Act, s.13(1)(b) and 69).

(b) Approvals (e.g. prior-checking, notification) NO

(c) Redress for individuals YES

The Commissioner has functions in relation to redress for individuals (see, in particular, Privacy Act, Part 8, ss.66-96). In brief, these are to investigate actions, to act as a conciliator, and if necessary take steps if there appears to be an interference with privacy and a settlement cannot be secured (e.g. referring a case to the Human Rights Review Tribunal).

(d) Sanctions available to Authority (e.g prosecution and enforcement) YES

The Commissioner does not impose sanctions directly. However, he has powers to refer substantiated complaints which cannot be settled to the Director of Human Rights Proceedings so that legal proceedings can be taken in the Human Rights Review Tribunal (refer Privacy Act, s.77, 82 - 89, and the Human Rights Act 1993, ss.92Q to 92W and Part 4). These are civil proceedings, there are no criminal sanctions under the Privacy Act. Recent amendments to the Human Rights Act changed and the names of several institutions. The Director of Human Rights Proceedings and the Human Rights Review Tribunal were formerly known respectively as the Proceedings Commissioner and the Complaints Review Tribunal.

(e) Guidance (e.g. compliance advice) YES

The Commissioner has the function of providing guidance (Privacy Act, s.13(1)(k) and (l)). The Commissioner can also issue codes of practice which can, among other things, provide how the information privacy principles are to be complied with (Privacy Act, Part 6).

(f) Public education YES

The Privacy Commissioner possesses functions in relation to education and publicity (Privacy Act, s.13(1)(a) and (g)).

(g) Policy advice for government YES

As noted at question 22(b), the Commissioner has a number of functions to report to the Minister of Justice, other Ministers or the Prime Minister. One statutory function is "to provide advice (with or without a request) to a Minister or an agency on any matter relevant to the operation of this Act" (Privacy Act, s.13(1)(l)). At an administrative level, the Cabinet Office Manual which guides the Government, both Ministers and officials, provides that the Commissioner is to be

consulted on proposed legislation as to compliance with the principles and guidelines in the Privacy Act.

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

YES

The Commissioner has the function to undertake research into, and to monitor developments in, data processing and computer technology to ensure that any adverse effects of such developments on the privacy of individuals are minimised (Privacy Act, s.13(1)(o)).

### Additional comments

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

No other comments offered.

### Other materials

30. List any attachments which will accompany the application.

No attachments provided.

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

URL: <http://rangi.knowledge-basket.co.nz/gpacts/actlists.html>

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.privacy.org.nz](http://www.privacy.org.nz)

### 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

### 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

Office of the Privacy Commissioner, New Zealand

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

Both Public and Private Sectors

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

Privacy Act

4 Autonomy and Independence?  
Is the authority guaranteed on 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

Largely provided for in Privacy Act

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

Don't know

Notes

OECD Guidelines and regard to Council of Europe recommendations

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

Full range of functions  
apart from prior checking

7 Does the Sub-group recommend accreditation?

Yes

No

Notes

8 If accreditation is recommended what is the accreditation as?

National authority (within the UN criteria)

Authority within a limited sub-national territory

Authority within an international or supranational body

Notes

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

Voting Rights

No Voting Rights

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?

Refusal

More Information

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

Yes

Not

If more information is required what is this:

Signed on behalf of the Sub-  
group:

*Jonathan Bamford*

Date: 26/06/02

Marie Georges

Date: 9 juillet 2002

Date:

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