

- Madrid: Data Protection Agency of the Region of Madrid (Agencia de Protección de Datos de la Comunidad de Madrid)

7

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

Antonio Troncoso Reigada
Director
DATA PROTECTION AGENCY OF THE REGION OF MADRID
Cardenal Marcelo Spínola, 14 - 3º
28016 MADRID

2. Contact person for this application:

- (a) Name

Ana Isabel Torres de Vega

- (b) Email address

~~ana.troncoso@data.protection.madrid.es~~

- (c) Direct telephone number

~~91 480 74 55~~

- (d) Fax contact

~~91 480 74 55~~

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)

Director of the Data Protection Agency of the Region of Madrid

5. Is the Authority a public body? YES

6. Geographical jurisdiction

The Region of Madrid

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)

Files with personal data created or managed by Public Administrations within the scope of the Autonomous Region of Madrid

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

Legal basis

9. Title of law under which the Authority is constituted
 Act 13/1995, dated 21st April, of regulation of the use of informatics in the processing of personal data in the Region of Madrid, modified by Act 13/1997, dated 16th June.
 Act 8/2001, dated 13th July, on Protection of Personal Data in the Region of Madrid

10. Is this principally a data protection law? YES

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

Regulation

12. Which body made the law?

The Assembly of Madrid

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

The Assembly of Madrid

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 Director of the Data Protection Agency of the Region of Madrid is appointed by the Data Protection Board. (art. 17.1)

15. What process is followed?

The Director of the Data Protection Agency of the Region of Madrid shall be appointed by an absolute majority, from among the members of Advisory Board. The appointed member shall be a person with a reputation for independence, high knowledge of the subjects for which he is responsible, and proven management capacity. (art. 17.4)

16. For what term are appointments made?

For four years

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

The Director of the Data Protection Agency of the Region of Madrid shall perform his duties with full independence and objectivity and shall not be subject to any instruction in the performance thereof. In all cases, the Director must hear the Advisory Board as to the proposals the latter may submit to the former in the performance of the latter's functions. (art. 16.2)

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

As a general rule NO. According to article 16.1 of Act 8/2001 the Director of the Data Protection Agency of the Region of Madrid shall be appointed for a four year term.

Only if the circumstances determined in article 16.3 are present, the term may expiry before the period established.

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

The President of the Region of Madrid at the request of the Data Protection Board. (art. 16.3)

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?

Severe breach of his obligations, incapacity arising while in office, incompatibility or sentence for willful criminal offence. (art. 16.3.)

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

- (e) to initiate an investigation with seeking provision YES

The Data Protection Agency of the Region of Madrid shall possess the means of investigation and effective power to act in public files which do not comply with the relevant data protection legislation. (art. 19)

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

- (g) make public statements YES

The Data Protection Agency of the Region of Madrid shall safeguard the existence of files with personal data, for which purpose it shall periodically publish a list of said files with additional information the Director of the Agency may determine, without prejudice to the competences of the Spanish Data Protection Agency with regard to the matter. (art. 15.i)

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

The Director of the Data Protection Agency of the Region of Madrid has full immunity from legal suit for actions performed in the course of his duties, as a consequence of the independence stated in article 16.2.

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).

Specific measures which determine the independence of the Authority are the following:

1. From the point of view of the Administrative Organization the measures regulated in article 14.1, which establishes that the Data Protection Agency of the Region of Madrid is an institution subject to Public Law, endowed with legal personality and full public and private capacity. The Agency acts with full independence of the Administration of the Region of Madrid in exercising its functions.

In the same way, the Administrative Acts issued by the Data Protection Agency of the Region of Madrid shall conclude the administrative channel and shall only be object of appeal to the contentious-administrative jurisdiction (art. 14.3).

2. In relation to the Finances and Assets of the Agency, article 21.1 of the Statute approved by Decree 22/1998, dated 12th February, the Data Protection Agency of the Region of Madrid has its own assets consisting on the property and stock belonging to it due to any title of acquisition.

In the same way, in accordance with article 20 of the Statute, the Data Protection Agency of the Region of Madrid shall prepare the relevant draft budget annually and shall present it to the Ministry of Finance who shall send it to the Government of the Autonomous Region of Madrid.

3. Another relevant measure of independence of the Data Protection Agency of the Region of Madrid is its autonomy in the determination of the way of access to the posts and the requirements and characteristics of the tests, in accordance with article 14.4 of Act 8/2001. The Agency shall also elaborate, call for, manage and resolve the provision of posts and professional promotion.

4. The Data Protection Agency of the Region of Madrid has an Advisory Board, regulated in article 17 of the Act 8/2001, whose function consists on the advice to the Director by means of Directives binding on the matter regulated by Act 8/2001 and the Statute of the Agency.

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

The implementation of EU Directive is specified in the introduction of Act 8/2001, since such Act derives from the authorization contained in Organic Act 15/1999, dated 13th December, Which implements in the Spanish Law the European Directive 95/46.

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 |
| (c) | (ii) Council of Europe Additional Protocol (8 November 2001) | YES/NO |
| (d) | UN Guidelines (1990) | YES/NO |
| (e) | EU Directive (1995) | YES |

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

The Data Protection Agency of the Region of Madrid shall have the means of inspection and effective power necessary to act in order to get that the processing of personal data complies with the Act 8/2001. The civil servants performing the inspection to which the preceding paragraph refers shall be considered a public authority when performing their duties. (art. 19.1)

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

One of the functions of the Data Protection Agency of the Region of Madrid regulated under Article 15 is to provide information, in the required manner, on the draft general provision pursuant to this Act and the provisions for the creation, rectification and erasure of files containing personal data within the scope of application of this Act. (art. 15.g)

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

The Data Protection Agency of the Region of Madrid attends the requests and solve the claims made by data subjects for the protection of the rights of access, rectification and erasure in relation to the files within the scope of application of this Act. (art. 15. c)

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

In case of committing any of the offences classified in Article 44 of the Organic Act 15/1999, dated 13th December, on Protection of Personal Data, the Director of the Data Protection Agency of the Region of Madrid shall hand down a Resolution establishing the measures it shall proceed to adopt to cease or rectify the effects of the offence. The Data Protection Agency shall also propose the begin of the corresponding disciplinary actions against the person responsible for the offence committed.

In cases of very severe offences, the Director may cease the processing of data. (art. 13, 12.2)

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

The Data Protection Agency of the Region of Madrid shall issue, when appropriate and without prejudice of the powers of other bodies, the necessary instructions to adapt processing to the principles of this Act. (art. 15. d)

(f) public education YES

As a consequence of the functions regulated under Articles 15.a and 15.b, the Data Protection Agency of the Region of Madrid performs formative activities.

(g) policy advice for government NO

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

The function regulated under Article 15.j of Act 8/2001 is to ensure fulfilment of the provisions the Public Statistics Acts of the Region of Madrid establish as to collection of statistical data and statistic secrecy, as well as to provide the necessary instruction to find on the security conditions of the files established for exclusively statistical purposes.

Additional comments

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

The functions of the Data Protection Agency of the Region of Madrid arise from the regulation contained in Article 41 of the Organic Act 15/1999, on Protection of Personal Data. This Article establishes that the functions of the Spanish Data Protection Agency, shall be exercised, when affecting files with personal data created or managed by the Autonomous Regions, and by the Local Administration within its territorial scope, by the relevant bodies in each Region, which shall be considered supervisory authorities, which shall be guaranteed full independence and objectivity in the performance of their duties.

To develop the above mentioned legal provision is issued the Act 13/1995, dated 21st April, which regulates the use of informatics in the processing of personal data in the Region of Madrid, abolished by the Act 8/2001, dated 13th July, on Protection of Personal Data in the Region of Madrid. In chapter IV of this Act is created the Data Protection Agency of the Region of Madrid, whose functions have been described in this Application.

Currently the Data Protection Agency of the Region of Madrid in the only Autonomous Agency within the Kingdom of Spain. However, it is important to indicate that the Data Protection Agency of the Catalan Region has already been created by the Act 5/2002, dated 19th April, although it has not yet come into operation.

Other materials

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

Act 8/2001, dated 13th July, on Protection of Personal Data in the Region of Madrid

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

www.madrid.org/apdcm

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.

www.madrid.org/apdcm

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

Data Protection Agency of the Region of Madrid

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

All public sector organisations within the region of Madrid.

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

DP laws of 1995 and 2001

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

There is a Data Protection Council who designate the Director and advises. The Director is given full independence (Art.16.2)

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

EU Directive and Conv. 108

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 answers to questions on redress and sanctions are a little confusing. Art 15 does give it power to resolve complaints from individuals and issue instructions to controllers, proposing disciplinary proceedings

7 Does the Sub-group recommend accreditation?

Yes

No

Notes

The only areas of concern are extent of jurisdiction and redress/sanctions. The former is probably comparable with other applications from regional bodies. The later point is more marginal but taken with all the other positive responses in the area of functions is sufficient.

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

Notes

Group recommend that, at the discretion of the conference host, observer status is granted?

Not Applicable

Yes

Not

If more information is required what is this:

Signed on behalf of the Sub-group:

Jonathan Bamford

Date: 24/02/08

Date:

Date:

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