

British Columbia: Information and Privacy Commissioner

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

Name and postal address of authority

**Information & Privacy Commissioner for British Columbia
 PO Box 9038 Stn. Prov. Govt.
 Victoria, BC V8W 9A4**

2. Contact person for this application:

(a) Name

**David Loukidelis, Information and Privacy Commissioner for British
 Columbia**

(b) Email address

dloukidelis@bcpc.ca

(c) Direct telephone number

(250) 387-5529

(d) Fax contact

(250) 387-5529

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)

Information and Privacy Commissioner for British Columbia

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

6. Geographical jurisdiction

Province of British Columbia, 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)

Entire public sector (approximately 2,000 public bodies)

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

Freedom of Information and Protection of Privacy 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?

Legislative Assembly of British Columbia

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

Legislative Assembly of British Columbia

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.)

On the recommendation of the Legislative Assembly, Cabinet must appoint a person who has been unanimously recommended by a Special Committee of the Legislative Assembly.

15. What process is followed?

A Special Committee of the Legislative Assembly unanimously recommends a person to the Legislative Assembly. The position is first advertised and an interview process is conducted by the Special Committee.

16. For what term are appointments made?

Six years (non-renewable)

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

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?

Cabinet must remove the Commissioner on the recommendation, by vote, of 2/3 of members present in the Legislative Assembly. This has never happened.

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

Grounds are specified in the statute to be for cause or incapacity.

21. What are the grounds for removal?

For cause or incapacity.

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: Under s. 42(1)(a), the Commissioner can, whether or not a complaint is made, initiate and conduct investigations and audits to ensure compliance with any provision of the statute. Under s. 44, the Commissioner can compel individuals to testify under oath, can compel production of records and examine information in a record.

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

details: Section 51 requires the Commissioner to report at least annually to the Legislative Assembly of British Columbia on the work of the Commissioner's Office. Under s. 41(4), the Commissioner may make a special report to the Legislative Assembly of British Columbia if, in the Commissioner's opinion, the amounts and establishment provided for the Commissioner's Office in the annual provincial budget are inadequate for fulfilling the duties of the Office.

(g) make public statements YES/NO

details: Under s. 42(1)(c), the Commissioner can inform the public about the statute. Under ss. 42(1)(f), (g) and (h), the Commissioner can comment on the implications for protection of privacy of: proposed legislative schemes or programs; of automated systems for collection, storage, analysis or transfer of information; and on the use or disclosure of personal information for record linkages. As indicated above, at item 22(f), under s. 51 the Commissioner must report at least annually to the Speaker of the Legislative Assembly on the work of the Commissioner's Office.

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

Yes. Section 48 provides that no proceedings lie against the Commissioner or against any person acting on behalf of or under the Commissioner's direction.

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).

As an officer of the Legislature, the Commissioner can only be removed from office by the Legislative Assembly of British Columbia for cause or incapacity, as provided in s. 38 of the statute. Accordingly, the Commissioner is independent of the executive and judicial branches of government, the executive branch being the civil service, at the head of which sits the provincial Cabinet. Under s. 37(3), the Commissioner holds office for a single fixed term of six years. Under s. 41, the Commissioner, not the executive branch of government, has the authority to appoint employees necessary to enable the Commissioner to perform the duties of the office and the power to retain any other persons necessary for that purpose.

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)

The Act follows the OECD Guidelines (1980).

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 questions have ever been raised.

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: Section 42(1)(a) permits the Commissioner to conduct investigations and audits to ensure compliance with any provision of the statute.

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

details: Under s. 27(1)(a)(ii), the Commissioner must approve any indirect collection of personal information by a public body before such indirect collection can proceed. Under ss. 25(3) and (4), a public body must, before disclosing third-party information in the public interest, first notify the Commissioner if practicable, and must give notice of disclosure to the Commissioner if such advance notice cannot be given.

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

details: Section 42(2)(e) allows the Commissioner to investigate complaints that personal information has been collected, used or disclosed by a public body in contravention of the requirements of the Act. The Commissioner can also initiate such an investigation on his or her own initiative.

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

details: Under s. 58(3)(e), the Commissioner may order a public body to stop collecting, using or disclosing personal information. Under s. 58(3)(d), the Commissioner can confirm a public body's decision not to correct personal information or specify how the public body must correct personal information. Under s. 58(3)(f), the Commissioner may require a public body to destroy personal information collected in contravention of the statute. Under s. 58(4), the Commissioner may specify terms or conditions in any of these orders under s. 58. Under s. 59(1), a public body must comply with an order of the Commissioner within 30 days, unless proceedings for judicial review have been brought before then in the Supreme Court of British Columbia. Under s. 74, it is an offence punishable by imprisonment or a fine, or both, to fail to comply with an order of the Commissioner under s. 58. It is also an offence, under s. 74, to make false statements to the Commissioner, or mislead or obstruct the Commissioner, in the performance of the duties, powers or functions of the Commissioner under the statute.

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

details: Section 42(2)(a) allows the Commissioner to investigate and to attempt to resolve complaints that a duty under the Act has not been performed.

- (f) public education YES NO

details: Section 42(1)(c) permits the Commissioner to inform the public about the Act.

- (g) policy advice for government YES NO

details: Section 42(1)(f), (g), (h) and (j), provide that the Commissioner may, in a number of circumstances, comment or bring to the attention of any public body privacy issues, as outlined in the response to item 22(g).

- (h) studies or research (e.g. into developing technologies, privacy issues) YES NO

details: Under s. 42(1)(e), the Commissioner may engage in or commission research into anything affecting the achievement of the purposes of the statute.

Additional comments

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

The following clarification is offered regarding some of the answers and details provided above, using the above item numbers :

8. The *Freedom of Information and Protection of Privacy Act* contains both freedom of information and data protection provisions. The Commissioner is concerned only with these responsibilities, since the Commissioner has no other duties under another statute.
10. For the reasons just given, the statute is not 'principally' a data protection law, but is mainly concerned with data protection, in addition to freedom of information.
17. Please refer to the response given under item 24 regarding the independent status of the Commissioner.

18. The Commissioner is the only member of the authority. The Commissioner can, as indicated above in item 21, only be removed before the expiry of the Commissioner's term for cause or incapacity, and then only by a 2/3 vote of members present in the Legislative Assembly and subsequent Cabinet confirmation of that recommendation.

Other materials

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

N/A

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

URL: <http://www.oipcbc.org/FOI-ACT.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.oipcbc.org/publications/annual/>

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

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 for
British Columbia, 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 but follows 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