(Bayerische

GERMANY:
Bavaria: Privacy Commissioner
Landesbeauftragte für den Datenschutz)



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.

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- (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

Reinhard Vetter, Bavarian Privacy Commissioner, Wagmuellerstr. 18, D 80539 Muenchen

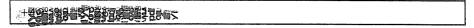
- 2. Contact person for this application:
 - (a) Name

Reinhard Vetter

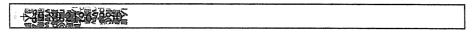
(b) Email address



(c) Direct telephone number



(d) Fax contact



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)	
	Commissioner	
5.	Is the Authority a public body? YES	
6.	Geographical jurisdiction	
	State of Bavaria - Germany	
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	
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	
	Bavarian Constitution, Bavarian Data Protection Law	
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?	
	Bavarian Parliament	
13.	What body has the power to amend or revoke the law?	
	Bavarian Parliament	

Autonomy and independence

14. to the questic	presiding r	ints member(s) of the Authority? (Please explain if a different process applies member from other Authority members in this question and in subsequent			
1	The Commi	ssioner is elected by the Bavarian Parliament, staff are appointed by the Senior Board of the Bavarian at in consent with the Commissioner			
15.	What proc	ess is followed?			
16.	For what t	erm are appointments made?			
	The Comr	The Commissioner is elected for a term of six years			
17.	Does the l endently? Y	aw under which the Authority operates explicitly state that it acts ES			
18.	May the m	tember(s) be removed before expiry of their term? No, but see Nr. 20 and 21			
19.	If yes, who	o may remove members of the Authority before expiry of their term?			
20.		limited reasons specified in the statute, or in another law, providing the grounds for removal?			
	yes				
21.	What are	the grounds for removal?			
		reasons as there are necessary to remove a professional judge by decision of rian Parliament with a majority of two third			
22.	Does the	Authority possess the following powers (briefly describe and give statutorys)			
	(e)	to initiate an investigation with seeking provisionYES			
		details:			
	(f)	to report to the head of State, head of Government or legislature YES			
		details:			
	(g)	make public statements YES			
		details:			

23.		Does the Authority (and its staff) have immunity from legal suit for actions performed in the course of their duties?				
	yes					
24.	guara	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).				
Cons	sistency	with internationa	al instruments			
25.	Does	the Authority exp	licitly implement	any international	instrument (for example if the	
	law u	nder which the A	uthority operates	specifies that it	implements such international	
	instru	iment)?	YE	S		
	If "ye	es", which of the fo	ollowing does it <u>pr</u>	incipally impleme	ent?	
	(a)	OECD Guidelir	nes (1980)		NO	
	(b)	(i)Council of Eu	rope Convention	No 108 (1981)	YES	
		(ii) Council of Europe Additional Protocol (8 November 2001)				
					YES	
	(c)	UN Guidelines	(1990)		NO	
	(d)	EU Directive (1	995)		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.	with ques Com	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	no				

Appropriate functions

(a)	tatutory references): compliance (e.g. audit, inspection)	YES
()		
	details:	
(b)	approvals (e.g. prior-checking, notification)	YES
	details:	
(c)	redress for individuals (e.g. complaints, conciliat	tion enforcement) YES
	details:	
(d)	sanctions available to Authority (for example, p. YES	rosecution and enforce
	details: formal objection	
(e)	guidance (e.g. compliance advice)	YES
	details: giving advice and consultation	
(f)	public education	YES
	details: publication and lectures	
(g)	policy advice for government	YES
	details: giving advice and consultation	
(h)	studies or research (e.g. into developing technol	logies, privacy issues) NO
	details:	
tional	comments	

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.datenschutz-bayern.de/recht/verfassg.htm

URL: http://www.datenschutz-bayern.de/recht/baydsg_n.pdf

URL: http://www.datenschutz-bayern.de/recht/baydsgsum.htm

URL: http://www.datenschutz-bayern.de/recht/BayDSGsum.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.datenschutz-bayern.de/tbs/tb19/tb19.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

Bavarian Privacy Commissioner, Germany

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)?

Notes
Covers Public Sector

<u>Yes</u>

No

Don't know

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

Bavarian DP law and constitutional guarantees

Yes

No

Don't know

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)?

Notes

Elected by parliament. DP law appears to give appropriate independence. Although satisfactory answers were provided the specific statutory references were not included in application.

<u>Yes</u>

No

Don't know

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)?

Notes

Conv. 108 and EU Directive

Yes

No

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 There appears to be a full range of functions (minus research) but no further statutory references were provided. Given status as German Land it is assumed the necessary statutory provisions do exist
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7	Does the Sub-group recommend accreditation? Yes No	Notes Despite the lack of the statutory references in respect of Q's 22 and 28, It is reasonable to assume there are statutory provisions and this should not be a barrier to accreditation
8	If accreditation is recommended what is the accreditation as?	Notes
	Authority within a limited sub-national territory	
9	If accreditation is as an authority within an international/supranational body does the recommendation include voting rights?	Notes
	Not Applicable .	
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?	Notes
	Refusal	
	More Information	
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?	Notes
	Not Applicable	

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Yes			
Not	•		
If more information is rea	quired what is this:		
	Y 4 - D 6 - 1	Duta	£16100
gned on behalf of the Sub- oup:	Jonathan Bamford	Date:	5/6/02
	Blair Stewart	Date:	9 July 2002
	Butt Stewart	Date.	7 3 Giy 2002
		Date:	

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