Brandenburg: Data Protection and Access to Information Commissioner (Landesbeauftragter für den Datenschutz und für das Recht auf Akteneinsicht)

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 i	postal	address	of auth	ority

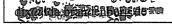
Landesbeauftragter für den Datenschutz und für das Recht auf Akteneinsicht Commissioner for Data Protection and Access to Information Brandenburg

Stahnsdorfer Damm 77, D-14532 Kleinmachnow, Germany

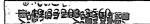
- 2. Contact person for this application:
 - (a) Name

Dr. Alexander Dix

(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

	Commissioner
	Is the Authority a public body? YES
	Geographical jurisdiction
	Land Brandenburg/State of Brandenburg
	Sectoral coverage (i.e. does the applicant's jurisdiction cover the entire public and p sectors? If only part of a sector or if there are significant activities not covered, specify)
	Public sector only
	Is the role of the Authority mainly concerned with data protection and privacy? YES
ga	al basis Title of law under which the Authority is constituted
ga	
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Autonomy and independence

	The Commissioner is elected by the State Parliament (Landtag Brandenburg)
15.	What process is followed?
	Nomination from within the Parliament; candidates are heard by the Standing Committee of Internal Affairs; election takes place in a plenary session of the House
16.	For what term are appointments made?
	Six years
17. indep	Does the law under which the Authority operates explicitly state that it acts bendently? YES
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?
	Speaker of the State Parliament
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?
	The same grounds as in the case of judges (gross improper conduct)
22.	Does the Authority possess the following powers (briefly describe and give statutor references)
	(e) to initiate an investigation with seeking provision YES
	details: The Commissioner may at any time initiate an investigation (sec. 23(1) of the BbgDS

details: The Commissioner acts independently and therefore has the right to make public

statements at any time.

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

Legally speaking there is no formal immunity. But de facto immunity follows from the independence of the Commissioner and his office.

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).

The Statute requires that the Commissioner is provided with the necessary funds to perform his duties.

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

If "yes", which of the following does it principally implement?

(a) OECD Guidelines (1980)

YES

(b) (i)Council of Europe Convention No 108 (1981)

YES

(ii) Council of Europe Additional Protocol (8 November 2001)

YES

(c) UN Guidelines (1990)

YES

(d) 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)

EU Directive 1995

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

2		es the Authority possess functions in any of statutory references):	the following areas (briefly descr	ribe and
	(a)	compliance (e.g. audit, inspection)	YES	
	details: T	he Commissioner has the power to inspect as	ıd to conduct audits (sec. 26 Bbg	DSG)
	(b)	approvals (e.g. prior-checking, notificatio	n) YES	
details: The (sec. 23 Bb		oner has to be informed before systems for a	itomatic processing of personal of	lata are installed
	(c)	redress for individuals (e.g. complaints, co	onciliation enforcement) YES	
)		details: Handling complaints and trying	to achieve a settlement	
	(d)	sanctions available to Authority (for exan YE		nt
details:The	Commissio	oner has the power to state formally that the l	w has been infringed (sec. 25 Bb	ogDSG)
***************************************	(e)	guidance (e.g. compliance advice)	YES	
details: The (sec. 23 Bb		oner may advise the State Parliament or the C	Sovernment on improvements in	data protection
	(f)	public education	YES	
details: N	lo formal p	ower, but the Commissioner is taking an activ	e interest	
9	(g)	policy advice for government	YES	
		details: See above e)		
	(h)	studies or research (e.g. into developing t	echnologies, privacy issues) NO	
		details:		
	Additiona	l comments		
	29. Apj	plicants are invited to offer any further comm	ents that they wish.	
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Other materials

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

All publications are in German, so no material is attached to this application

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

URL: http://www.lda.brandenburg.de (in German)

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

<u>URL:http://www.lda.brandenburg.de</u> (in German)

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	Commissioner for Data P Information Brandenburg	
2	Does the authority have clear a protection functions covering a activity (eg not just an advising by a narrow field such as medical prices.)	broad area of economic body or a body operating in	Notes Public sector in Land
	<u>Yes</u>		
	No		
	Don't know		
3	Legal Basis. Is the authority a public body eappropriate legal basis (eg by st		Notes Brandenburg DP law
	<u>Yes</u>		
	No		
	Don't know		
4	Autonomy and Independence? Is the authority guaranteed on autonomy and independence to the power to make public statemer removal from office)?	appropriate degree of perform its functions (eg	Notes Provided for in law
	Yes		
	No		
	Don't know		
5	Consistency with International Is the law under which the authorized compatible with at least one of instruments dealing with data; EU Directive, OECD Guidelines, Convention)?	hority operates f the international protection and privacy (eg	Notes All instruments implemented
	<u>Yes</u> .		
	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	Notes Full functions apart from restricted prosecution role and no power to undertake research
	Don't know	
7	Does the Sub-group recommend accreditation?	Notes
	<u>Yes</u> No	
8	If accreditation is recommended what is the accreditation as?	Notes
	National authority (within the UN criteria)	
	Authority within a limited sub-national territory	
	Authority within an international or supranational body	
9	If accreditation is as an authority within an international/supranational body does the recommendation include voting rights?	Notes
	Voting Rights	
	No Voting Rights	
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	
	Yes	

If more information is re	equired what is this:		
	•		
gned on behalf of the Sub-	Jonathan Bamford	Date:	26/6/02
gned on behalf of the Sub-	Jonathan Bamford	Date:	26/6/02
	Jonathan Bamford	Date:	26/6/02
	Jonathan Bamford Blair Stewart	Date:	26/6/02 9 July 2002

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