

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

Office of the Privacy Commissioner for Personal Data, Hong Kong Unit 2001, 20/F, Office Tower, Convention Plaza, 1 Harbour Rd., Wanchai, Hong Kong

2. Contact person for this application:

(a) Name

Mr. Raymond Tang

(b) Email address

raymond.tang@privacy.org.hk

(c) Direct telephone number

852-38877000

(d) Fax contact

852-38877000

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)

Commissioner

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

6. Geographical jurisdiction

Hong Kong Special Administrative Region ("HKSAR"), China

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)

Both Public & Private Sectors in their entirety.

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

Law of Hong Kong – Personal Data (Privacy) Ordinance (Chapter 486)

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 Council, HKSAR

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

Legislative Council, HKSAR

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.)

Chief Executive of HKSAR

15. What process is followed?

Chief Executive shall, by notice in the Gazette, appoint a person to be Commissioner – section 5(3) of the Ordinance.

16. For what term are appointments made?

The Commissioner shall hold office for a period of 5 years and shall be eligible for reappointment for not more than 1 further period of 5 years – section 5(4) of the Ordinance.

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

Yes, in terms of the effects of the powers and functions under section 8 of the Ordinance.

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?

May be removed from office by Chief Executive with the approval by resolution of the Legislative Council.

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?

i) inability to perform the functions of his office; or ii) misbehaviour – section 5(5)(b) of the Ordinance.

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: section 36-38 – Inspections and Investigations
section 40 – Power to continue investigation notwithstanding withdrawal of complaints.
section 42 – Power of entry on premises for purposes of inspection and investigation.
Section 43-44 – Proceedings and hearings before the Commissioner.

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

details: Tabling of annual report in the Legislative Council – section 4(4) of schedule 2 of the Ordinance.

(g) make public statements YES/NO

details: section 8 of the Ordinance

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

No

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).

Commissioner shall not, without the approval of the Chief Executive:
i) hold any office of profit other than his office as Commissioner; or
ii) engage in any occupation for reward outside the functions of his office.
- section 6 of the Ordinance.

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

Yes, by the effect of the terms and provisions of the Ordinance.

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)

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/NO

details: Commissioner has power to carry out inspections under section 36.

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

details: Commissioner has power to issue and approve codes of practice under section 12.

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

details: Commissioner has power to investigate complaints under section 38.

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

details: Commissioner has power to issue an enforcement notice under section 50, non-compliance of which gives rise to criminal sanction.

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

details: Commissioner has power to issue guidelines under section 8.

(f) public education YES/NO

details: Promotion of awareness and understanding is a function under section 8.

(g) policy advice for government YES/NO

details: Commissioner has power to issue guidelines under section 8.

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

details: It is a function of the Commissioner under section 8 to conduct research into, and monitor developments in, the processing of data and computer technology in order to take account of any likely adverse effects such developments may have on the privacy of individuals in relation to personal data.

Additional comments

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

Nil

Other materials

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

Nil

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

URL: <http://www.pco.org.hk>

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.pco.org.hk>

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

Privacy Commissioner for Personal Data, Hong Kong

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 in HKSAR

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

Hong Kong Personal Data (Privacy) Ordinance

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

Provided for by DP Ordinance

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 EU Directive

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 provided for by DP Ordinance

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

Does not fulfil UN criteria though special status of HKSAR unusual. Application not made to be a national authority, in any event.

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

Yes

Notes

Not

If more information is required what is this:

Signed on behalf of the Sub-
group:

Jonathan Bamford

Date: 5/6/02

Blair Stewart

Date: 9 July 2002

Date:

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