

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

Commissioner for Data Protection
280, Republic Street, Valletta CMR 01, Malta

2. Contact person for this application:

(a) Name
Saviour Cachia

(b) Email address

~~commissioner@dataprotection.gov.mt~~
~~s.cachia@dataprotection.gov.mt~~

(c) Direct telephone number

+356 2122 2000

(d) Fax contact

+356 2122 2000

Type of application

3. The application is for accreditation as:

- | | |
|----------------------------|-----|
| (a) national Authority | YES |
| (b) sub-national Authority | NO |

(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

Malta

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 and Private sectors

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

Data Protection Act

10. Is this principally a data protection law? YES

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

Statute

12. Which body made the law?

Parliament

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

Parliament

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 Prime Minister after he has consulted the Leader of the Opposition.

15. What process is followed?

The Prime Minister consults the Leader of Opposition and appoints the Commissioner.

16. For what term are appointments made?

For a term of five years.

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

The Prime Minister upon an address of the House of Representatives (Parliament) supported by the votes of not less than two thirds of all members of 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?

On the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.

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

(e) to initiate an investigation with seeking provision YES

i) The Commissioner exercises control and can verify whether processing is carried on in accordance with the Act, and if necessary can instruct the controller to take measures as necessary, and can also institute legal proceedings where the Act has been violated (Article 40 b-f)

- ii) The Commissioner is entitled to request investigations, and any person who does not comply shall be guilty of an offence (Article 41).
- (f) to report to the head of State, head of Government or legislature YES

After the end of each financial year, the Commissioner has to transmit to the Minister responsible for Data Protection, a copy of a statement of account duly audited, who lays it on the Table of the House of Representatives (Article 53).

- (g) make public statements YES

The Commissioner has to draw up annual reports of his activities, at least once a year, which reports shall be made public (Article 40 k).

- 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).

The Commissioner has:

- (a) independence of functions (Article 37);
- (b) distinct legal personality (Article 38);
- (c) the power to seek supplementary funding if the funds allocated to him are insufficient (Article 52 (2)).

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?

- (e) OECD Guidelines (1980) NO
- (f) (i) Council of Europe Convention No 108 (1981) YES
- (ii) Council of Europe Additional Protocol (8 November 2001) YES/NO
- (g) UN Guidelines (1990) NO
- (h) 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)

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):

(d) compliance (e.g. audit, inspection) YES

In the course of investigations inspections and compliance audits can be carried out to facilitate the investigations, although they are not specifically mentioned.

Article 40 b - e

Article 41

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

(i) Article 34 - Prior-checking

(ii) Article 16 - Sensitive personal data for Research and Statistics

(f) redress for individuals (e.g. complaints, conciliation enforcement)

YES

(i) Article 21 - Right of Access by the data subject;

(ii) Article 22 - Request for rectification, blocking or erasure;

(iii) Article 24 - Request that an automatic decision be reconsidered;

(iv) Article 40 (b) - Request Commissioner to verify processing of data;

(v) Article 40(d) - Send complaints to the Commissioner.

(g) sanctions available to Authority (for example, prosecution and enforcement)

YES

(i) Commissioner can seek rectification and may impose Administrative fines, and if the controller fails to comply the Commissioner shall commence proceedings against the controller - Article 42

(ii) Commissioner can order erasure of personal data where unlawfully processed - Article 43.

(iii) Any person contravening the Act shall be guilty of an offence and shall on conviction be liable to a fine, imprisonment or both - Article 47.

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

(i) Article 40(e) - to issue directions as required;

(ii) Article 40(g) - to encourage the drawing up of suitable codes of conduct;

(iii) Article 40(j) - to advise Government on any legislative measures to enable him carry out his functions properly;

(iv) Article 54 - Advise the Minister on prescribing regulations for the better carrying out of Act.

(i) public education YES

Article 40(h) – The Commissioner is to take such measures as necessary to bring to the knowledge of the public the provisions of this Act, and advise any person where required.

(g) policy advice for government YES

(i) Article 40(j) – to advise Government on any legislative measures to enable him carry out his functions properly;

(ii) Article 54 – Advise the Minister on prescribing regulations for the better carrying out of Act.

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

(i) Commissioner has to approve research and statistics concerning sensitive data – Article 16.

(ii) Commissioner can issue directions as required for the purposes of the Act – Article 40(e);

Additional comments

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

Subsidiary legislation has also been issued concerning the processing of personal data in the telecommunications sector. This has been based on directive EU 2002/58.

Other materials

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

A soft copy of the Data Protection Act in word format entitled “DPA14122002.doc”.

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

URL:

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:

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 Commissioner, Malta

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

Both public and private sector.

3 Legal Basis.

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

Yes

Notes

Data Protection Act 2001.

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

EU Directive and CoE Convention 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

Notes

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)

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?

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

Notes

If more information is required what is this:

Signed on behalf of the Sub-
group:

Blair Stewart

Date: **23 June 2003**

Date:

Date:

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