

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

THE INSPECTOR GENERAL FOR PERSONAL DATA PROTECTION PL.POWSTAŃCÓW WARSZAWY 1 00 - 030 WARSZAWA POLAND

2. Contact person for this application:

(a) Name

IGOR KOWALEWSKI

(b) Email address

igorkowalewski@poczta.onet.pl
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(c) Direct telephone number

+48 22 827 28 10 25 26

(d) Fax contact

+48 22 827 28 10 25 26

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)

ONE-MAN BODY

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

6. Geographical jurisdiction

TERRITORY OF THE REPUBLIC OF POLAND

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 AND PRIVATE SECTOR

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

THE ACT OF AUGUST 29, 1997 ON THE PROTECTION OF PERSONAL DATA
(Journal of Laws of October 29, 1997, No. 133, item 883 with later amendments)

10. Is this principally a data protection law? YES/NO

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

THE ACT (STATUTE)

12. Which body made the law?

THE SEJM OF THE REPUBLIC OF POLAND WITH THE CONSENT OF THE
SENATE

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

THE SEJM OF THE REPUBLIC OF POLAND WITH THE CONSENT OF THE
SENATE (BY THE AMENDING ACT)

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 INSPECTOR GENERAL IS APPOINTED AND DISMISSED BY THE SEJM OF THE REPUBLIC OF POLAND WITH THE CONSENT OF SENATE (art. 8 par. 2 of the Act for Personal Data Protection)
-DIRECTOR OF THE BUREAU IS APPOINTED AND DISMISSED BY THE INSPECTOR GENERAL (§3 point 1 of the regulation by the President of the Republic of Poland as regards granting the statutes to the Bureau of the Inspector General for the Protection of Personal Data)
-the staff of the Bureau is employed by the Inspector General (§3 point 3 of the regulation by the President of the Republic of Poland as regards granting the statutes to the Bureau of the Inspector General for the Protection of Personal Data)

15. What process is followed?

The candidates for the Inspector General's position are proposed by the parliamentary clubs of particular parties, and then the Sejm by the means of voting chooses the candidate with the consent of Senate. Prior to assuming his/her duties, the Inspector General shall take the oath before the Sejm of the Republic of Poland.
-the staff of the Bureau is employed

16. For what term are appointments made?

THE TERM OF OFFICE OF THE INSPECTOR GENERAL IS 4 YEARS

17. Does the law under which the Authority operates explicitly state that it acts independently? YES/NO (according to art. 8 par. 4)

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?

THE SEJM OF THE REPUBLIC OF POLAND WITH THE CONSENT OF THE SENATE

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

THE ACT DETERMINES THE PREREQUISITES OF DISMISSAL IN ART. 8 PAR 8

21. What are the grounds for removal?

THE SEJM, WITH THE CONSENT OF THE SENATE MAY DISMISS THE INSPECTOR GENERAL, IN CASE OF:

1. HIS/HER RESIGNATION;
2. BECOMING PERMANENTLY UNABLE TO PERFORM HIS/HER DUTIES DUE TO AN ILLNESS;
3. VIOLATING HIS/HER OATH;
4. BEING SENTENCED PURSUANT TO A VALID IN LAW COURT DECISION FOR COMMITTING A CRIME

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: The Inspector General institutes the explanatory proceedings at the request or ex officio (art. 14 of the Act)

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

details: pursuant to art. 12 point 5 of the Act

(g) make public statements YES/NO

details: media. local and international conferences. seminars

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

PURSUANT TO ARTICLE 11 THE INSPECTOR GENERAL MAY NEITHER BE HELD CRIMINALLY RESPONSIBLE OR DEPRIVED OF FREEDOM WITHOUT THE PRIOR CONSENT OF THE SEJM. THE INSPECTOR GENERAL MAY NOT BE DETAINED OR ARRESTED, EXCEPT IN *FLAGRANTE DELICTO*, AND HIS/HER DETENTION IS NECESSARY TO SECURE THE DUE COURSE OF PROCEEDINGS

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 Budget of the Bureau of the Inspector General constitutes a separate part from the national budget.

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)

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 implemented 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.)

ANOTHER AMENDMENT OF THE ACT ON THE PROTECTION OF PERSONAL DATA IS IN PREPARATIONS IN ORDER TO ADJUST AND APPROXIMATE THE POLISH LEGISLATION TO THE REQUIREMENTS PROVIDED FOR BY THE DIRECTIVE 95/46/EC, AND WHAT FOLLOWS TO FULL IMPLEMENTATION OF THIS LEGAL INSTRUMENT.

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: Pursuant to article 14 of the Act the Inspector General, or inspectors authorised by him/her shall be empowered, in particular to : enter the premises, demand explanations, examin a person, demand presentation of documents and other data, demand access for inspection purposes any devices, data carriers, and information systems

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

details: Pursuant to article 48 of the Act, the Inspector General gives his consent to the transfer of personal data across national borders, in case when data are transferred to a country which does not ensure at least the same level of protection as that in force in the territory of the Republic of Poland and in cases other than those referred to in article 47 point 2 and point 3

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

details: Data subject have the right to complain to the Inspector General pursuant to article 12 point 2 and article 22 of the Act

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

details: referring the case to the penal proceedings (art. 19 of the Act)

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

details: Pursuant to article 12 point 5 of the Act, legal advices are provided both orally and in writing.

(f) public education YES/NO

details: Pursuant to article 12 point 5 (conferences, trainings, seminars, media)

(g) policy advice for government YES/NO

details: Pursuant to article 12 point 4 (issuing opinions on bills and regulations with respect to the protection of personal data.)

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

details: research concerning security of information systems and computer networks.

Additional comments

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

none

Other materials

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

1. the Act of August 29, 1997 on the Protection of Personal Data
2. the Regulation of May 29, 1998 as regards granting the statutes to the Bureau of the Inspector General for the Protection of Personal Data

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

URL: <http://www.giodo.gov.pl/bgiw1220.htm>

URL: <http://www.giodo.gov.pl/bgiw1231.htm>

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: www.giodo.gov.pl/Docs/Pol/Pol_Docs/Sprawozd2001.doc

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

Inspector General for Personal Data Protection,
Poland

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 sectors.

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

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?

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?

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

Not

Notes

If more information is required what is this:

Signed on behalf of the Sub-
group:

Blair Stewart

Date: **22 July 2002**

Marie Georges

Date: 23 juillet 2002

Date:

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