

SWITZERLAND :

Canton of Basel-Landschaft: Data Protection Commissioner
(Datenschutzbeauftragte des Kantons Basel-Landschaft)

**Conférence Internationale des Commissaires à la Protection des Données
Comité de Vérification**

**International Conference of Data Protection Commissioners
Credentials Committee**

**DOSSIER DE CANDIDATURE POUR UNE ACCREDITATION EN
TANT QU'AUTORITE EN CHARGE DE LA PROTECTION DES
DONNEES**

Candidature auprès du Comité de Vérification pour l'accréditation d'une autorité chargée de la protection des données prévue par les résolutions adoptées lors de la 23ème conférence internationale des commissaires à la protection des données à Paris le 25 septembre 2001.

**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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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

Datenschutzbeauftragte des Kantons Basel-Landschaft,
Rathausstrasse 45, CH-4410 Liestal

2. Contact person for this application:

- (a) Name

lic. iur. Ursula Stucki, Data Protection Commissioner

- (b) Email address

ursula.stucki@kantonbs.ch

- (c) Direct telephone number

078 310 11 11

- (d) Fax contact

078 310 11 11

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

Canton Basel-Landschaft, Switzerland

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/NO

Legal basis

9. Title of law under which the Authority is constituted

Gesetz über den Schutz von Personendaten (Datenschutzgesetz) 7. March 1991

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?

Landrat des Kantons Basel-Landschaft (Parliament, Legislative)

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

Parliament, Legislative

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.)

Regierungsrat (Government, Executive)

15. What process is followed?

The Data Protection Office is appointed by the 5 executive Members of the government

16. For what term are appointments made?

unlimited with three month leaving notice

17. Does the law under which the Authority operates explicitly state that it acts independently? YES/**NO**

18. May the member(s) be removed before expiry of their term? YES/NO
We are not appointed for a specific term.

19. If yes, who may remove members of the Authority before expiry of their term?

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

No

21. What are the grounds for removal?

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:

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

details:

(g) make public statements YES/NO

details:

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).

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

We will implement it as soon as Switzerland has ratified the additional Protocol

(c) UN Guidelines (1990) YES/NO

(d) EU Directive (1995) YES/NO

The EU Directive has an indirect effect on our work as the Art. 29 Group checks the Swiss Standards regularly

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.)

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: § 25 Datenschutzgesetz BL (our Statute)

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

details: § 24 Datenschutzgesetz BL (our Statute)

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

details: § 24 Datenschutzgesetz BL (our Statute)

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

details:

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

details:

(f) public education YES/NO

details:

(g) policy advice for government YES/NO

details:

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

details:

Additional comments

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

Our Office has the same status as the Cantons Zurich and Zug taht have already been accredited as DPA for the Internationale Conference of Data Protection and Privacy Commissioners. The DPA of the Swiss Cantons are fully responsible for data protection maztters in their cantonal public Sector. They are not subordinate to the federal data protection officer.

Other materials

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

Datenschutzgesetz des Kantons Basel-Landschaft (Statute)

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

URL: http://www.bl.ch/docs/recht/sgs_1-2/162.0.htm#top

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.bl.ch/datenschutz

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

Datenschutzbeauftragte des Kantons Basel-Landschaft

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

It has functions in relation to all cantonal public sector bodies and private sector organisations contracted to deliver public sector activities

3 Legal Basis.

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

Yes

Notes

A DP law provides the basis and powers

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

Whilst the law does not have a specific reference to independence the appointment process, ability to make reports to the Wahlbehoerde and rights of tenure are sufficient guarantees

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

Convention 108 applies and as Switzerland has an EU adequacy finding, their DP laws are reviewed regularly and on a formal basis for continued adequacy

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
There are a wide range of powers including inspection and handling complaints. These do not include prosecution powers but s. 24 & 25 provides for advising individuals on rights, negotiations to secure these and duties of cooperation

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)

Authority within a limited sub-national territory

Notes

The authority has similar functions to other Swiss Canton authorities and are important in the framework of Swiss DP law as they cover areas not covered by the Federal Commissioner's jurisdiction

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?

Not applicable

Notes

11 If accreditation is not recommended and the application is from an authority with narrow functions does the Sub Group recommend that, at

Notes

the discretion of the conference host, observer status is granted?

Not Applicable

If more information is required what is this

Signed on behalf of the Sub-group:

Jonathan Bamford

Date: **21/07/05**

Date:

Date:

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