

**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 23<sup>rd</sup> International Conference of Data Protection and Privacy Commissioners at Paris on 25<sup>th</sup> 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](mailto:credentials@privacy.org.nz).

**Details of applicant**

1. Name and postal address of authority

Datenschutzbeauftragter der Stadt Zürich Röslistrasse 11 8006 Zürich Switzerland
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2. Contact person for this application:

(a) Name

Thomas Bärlocher
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(b) Email address

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(c) Direct telephone number

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(d) Fax contact

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**Type of application**

3. The application is for accreditation as:

(a) national Authority

(b) sub-national Authority

YES

## Description of applicant

4. Description of Authority (e.g. commissioner, commission, board etc)

Privacy commissioner

5. Is the Authority a public body? **YES**

6. Geographical jurisdiction

City of Zurich

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**

## Legal basis

9. Title of law under which the Authority is constituted

Gemeindeordnung der Stadt Zürich vom 26. April 1970 and  
Allgemeine Datenschutzverordnung der Stadt Zürich (ADSV) 5. Nov. 1997  
([www.das.stzh.ch/gesetze](http://www.das.stzh.ch/gesetze))

10. Is this principally a data protection law? ADSV: **YES**

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

Statute and regulation

12. Which body made the law?

Legislative body (Gemeinderat with 125 Members)

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

Legislative body (Gemeinderat with 125 Members)

**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.)

Legislative body (Gemeinderat with 125 Members)

15. What process is followed?

-

16. For what term are appointments made?

4 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? **NO**

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

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

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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**

details: ADSV 18

(f) to report to the head of State, head of Government or legislature **YES**

details: ADSV 19

(g) make public statements **YES**

details: ADSV 18-19

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)?

NOT YET

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)

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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.)

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### 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**

details: ADSV 18

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

details: ADSV 16

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

**YES**

details: ADSV 17

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

**NO**

details: -

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

details: ADSV 17

(f) public education **NO**

details: -

(g) policy advice for government **YES**

details: ADSV 16

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

**NO**

details: -

### Additional comments

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

As you know I attended the meetings at Hong Kong, Venice and Paris as an observer.  
I hope that you will accept this application for a accreditation as a regional data protection authority and I am glad to see you in Cardiff.

### Other materials

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

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

URL: [www.das.stzh.ch/gesetze](http://www.das.stzh.ch/gesetze) ADSV PDF

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.das.stzh.ch/berichte](http://www.das.stzh.ch/berichte) TB 1999 and TB 2000 PDF

### 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](mailto: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 **SUISSE- City of Zurich-Datenschutzbeauftragter der Stadt Zürich**

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)?

No

Notes

Public sector of the town  
Large powers

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

Yes

Notes

Public body established by statute

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

Notes

Designation by legislative body, the act provides for independent power of operating

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

No explicit reference yet

- 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

All functions except administrative sanction power, public education, and studies

- 7 Does the Sub-group recommend accreditation?

No to narrow geographical competence and powers

*The sub-group has not explicitly anticipated an authority of this type. Perhaps there might be difficulties if lots of cities had their own separate authorities? Are the institutions over which this authority has jurisdiction, also subject to the authority of the Canton Commissioner? If so, I would suggest the Committee decline accreditation on the basis that the city Commissioner, while performing a valuable function, is more akin to a city Chief Privacy Officer than an independent authority. However, if on the Swiss constitutional arrangement of powers the sole data protection jurisdiction in respect of city institutions is vested in this authority, then perhaps accreditation should be granted.*

*It is important to clarify whether the Canton Commissioner has jurisdiction. In the case of Hamburg's application, this was made in the name of the City of Hamburg but further research revealed that it is one of 3 'citystates' in Germany and as such is comparable with the other German Lander. If the City is some form of distinct entity because of some traditional approach to the political status of Zurich, this could lean towards sub national accreditation being provided. I think we have to be very careful about size of population etc. as some states or regions may have lesser populations than a large city. (for instance I suspect*

Notes

Data protection commissioner of a town,



*Guernsey may have less population/Data  
Controllers than Zurich)*

- 8 If accreditation is recommended what is the accreditation as?

**The applicant applies for Authority within a limited sub-national territory**

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 : too limited competence  
Suggest further enquiries might be warranted as to whether this authority is subordinate to the Canton Commissioner.  
More Information Required:  
Agree that further enquiries should be made to ascertain the geo- political status of Zurich**

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?

**Up to the Swiss delegation and the host**

Notes  
**The applicant has attended the meetings at Hong Kong, Venice and Paris as an observer and therefore has a commitment to and serious interest in the subject.**

If more information is required what is this:

**Contact needed**

- with J.P. Walter
- with this commissioner

*In my view, a key question is whether there is sole jurisdiction over city institutions or whether this jurisdiction is shared with the Canton Commissioner. Contact might be made with the Canton Commissioner Dr Bruno Baeriswyl.*

*Further enquiries should be made to ascertain the geo- political status of Zurich and whether this has a bearing on jurisdictional issues*

Signed on behalf of the Sub-  
group:

Marie Georges

Date: June 12, 2002

*BLAIR STEWART*

Date: 27 June 2002

*Jonathan Bamford*

Date: 5/7/02

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