

**24TH INTERNATIONAL CONFERENCE OF DATA PROTECTION
AND PRIVACY COMMISSIONERS,
CARDIFF, 9 SEPTEMBER 2002**

REPORT OF THE CREDENTIALS COMMITTEE

Last year in Paris, the 23rd International Conference of Data Protection and Privacy Commissioners elected as its first Credentials Committee:

- Elizabeth France, Information Commissioner, United Kingdom
- Michel Gentot, President of CNIL, France
- Bruce Slane, New Zealand Privacy Commissioner.

To assist it in its work, the Committee arranged for a senior member from each office to form a subgroup. The credentials sub-group included:

- Marie Georges, Head of European and International Affairs Division, CNIL, France
- David Smith, Assistant Information Commissioner, UK
- Blair Stewart, Assistant Privacy Commissioner, New Zealand.

In mid-2002 David Smith was replaced by Jonathan Bamford, Assistant Commissioner, as the UK member of the subgroup.

The Credentials Committee, and the subgroup continued the close collaboration started by the working group set up at the Venice conference to establish the accreditation features of data protection authorities.

The task

The Committee's role derives from the "Resolution on Accreditation Features of Data Protection Authorities" adopted during the Paris conference. That resolution had three parts:

- A Criteria and rules for Credentials Committee
- B Accreditation principles
- C Addendum to the guidelines and procedures for conference resolutions.

The Committee's task is to receive and process applications from any authority that wishes to be accredited to participate in the conference. The Committee assesses each application against the accreditation principles and recommends to the conference the authorities which ought to be accredited and in what category. The Committee's recommendations, in the form of a resolution, are circulated to conference delegates in advance (except in the case of urgency). Consideration of the recommendations is the first item of conference business at the closed session.

First steps

It was apparent from the outset that the Committee's first year would be challenging. It had to assess all the existing conference participants who wished to be accredited as well as any new authorities established during the year. To manage such a large task it was decided to develop a standard application form. The subgroup trialled a suitable form on 5 authorities in December 2001. The Committee is grateful for the

cooperation of the Commissioners from Australia, Brandenburg, Canada, Ireland and the UK in this test run.

The subgroup met in Auckland in March 2002 on the occasion of the 23rd Meeting of the International Working Group on Data Protection in Telecommunications. The outcome was the revision of the application form drawing upon lessons learned from the trial and guidelines for a common assessment. Practical arrangements for commencing the procedure and processing the resultant forms were settled. An email address for the Committee was established and a checklist for assessing the applications devised. Tasks were divided between the offices with, for example, CNIL translating the forms and arranging for despatch, the UK office developing a checklist and the New Zealand office receiving the applications and distributing them amongst the subgroup and Committee.

Application process

At the end of April application forms in French and English were posted to 65 prospective applicants, principally data protection authorities that had previously participated in the conference. Where an email address was held, an application form was also emailed. Authorities were asked to submit their applications electronically by 24 May 2002.

Some 35 applications were submitted by the due date of 24 May. By the end of July 52 applications had been received from 30 countries.

Assessment process

The applications were divided between the three offices with each member undertaking an initial assessment. Drawing upon the accreditation principles, each application was assessed using a standard checklist focusing upon whether:

- the authority has clear and wide ranging data protection functions covering a broad area of economic activity
- the authority is a public body established on an appropriate legal basis
- the authority is guaranteed an appropriate degree of autonomy and independence to perform its functions
- the law under which the operates is compatible with international instruments
- the authority has an appropriate range of functions with the legal powers necessary to perform those functions.

Each application received a second assessment by another member of the subgroup. It was a straightforward task to identify that most applicants easily met the accreditation criteria. Occasionally issues were identified which required careful study of the application and supporting law, discussion amongst the subgroup and with committee members, or which called for further enquiries of the applicant authority.

For example:

- It appeared from applications that several authorities did not possess a complaints function or some role in obtaining redress for affected individuals. However, in each case it transpired that the perceived shortcomings arose from confusion in

completing the application form. It should be acknowledged that many applicants were completing the form in a language which was not their own.

- Issues were raised about the statutory guarantees of independence. For example, several laws allowed commissioners to be removed from office for the same reasons as a civil servant may normally be removed from employment. In all but one case where the matter was considered in detail, the subgroup and Committee was satisfied that in all the circumstances there were appropriate guarantees of independence. In one case raising issues of independence and autonomy the Committee has not recommended accreditation. The application itself has not been declined but will be placed on hold until after the Cardiff conference. This will provide an opportunity for the applicant to make representations to the Committee during the conference if it so desires.

The other task that the Committee has to assess was the category into which each applicant would be placed. The categories are:

- national authority
- authority with a limited sub-national territory
- authority within an international or supranational body.

In most cases categorisation was straightforward. The subgroup and Committee used the membership list of the United Nations as a working guide for national authorities. In three cases the Committee recommended recognition as a sub-national authority where the application was as a national authority. In another case the Committee declined to recommend accreditation of a city institution that was subordinate to a sub-national authority. In 4 cases authorities made a dual application as both a national and sub-national authority. Three of these were clearly sub-national authorities. The fourth was clearly a national authority that also performs services on contract to the government of a sub-national territory.

Recommendations

The Committee has proposed two resolutions:

- The first contains the Committee's recommendation to accredit a number of applicant authorities. This may be supplemented by a further recommendation if any late applications are received and assessment completed.
- The second proposes that the accreditation rules be modified to ensure that all accredited authorities continue to meet the requirements of the accreditation principles.

A considerable amount of work has been undertaken to assess each authority on the basis of its application and the law in place at the time of that application. In the event that the legal basis of a particular authority is altered in such a way as to call into question its consistency with the accreditation principles, it is necessary for the authority concerned to notify the Committee of the fact. The existing criteria and rules allow for reconsideration in such a case.

Retiring commissioners

The Committee has been honoured to serve the conference during this challenging year. The initial terms of each member are for two years. However, Elizabeth France retires as the UK Information Commissioner shortly after the Cardiff conference and

therefore a replacement member should be elected in her place. Bruce Slane retires in 2003. A replacement member could be elected now to take office upon his retirement.

Elizabeth France

Michel Gentot

Bruce Slane

Credentials Committee