

Berlin: Data Protection and Freedom of Information Commissioner (Beauftragter für  
Datenschutz und Informationsfreiheit)

**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

Berliner Beauftragter für Datenschutz und Informationsfreiheit Pallasstrasse 25/26, D 12277 Berlin, Germany
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2. Contact person for this application:

(a) Name

Prof. Dr. Hansjürgen Garstka, Anja-Maria Gardain
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(b) Email address

<del>garstka@privacy.de gardain@privacy.de</del>
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(c) Direct telephone number

<del>004930216227111</del>
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(d) Fax contact

<del>004930216227111</del>
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**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

State of Berlin, Germany

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)

Data protection in public and private sector, freedom of information in 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

Berliner Datenschutzgesetz (1), Berliner Informationsfreiheitsgesetz (2)

10. Is this principally a data protection law? 1:YES 2:NO

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

Statute

12. Which body made the law?

Abgeordnetenhaus von Berlin (State Parliament)

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

Cf. 12

## 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.)

Commissioner is proposed and elected by the Parliament and appointed by the President of the Parliament

15. What process is followed?

Dont understand this question

16. For what term are appointments made?

Commissioner himself for five years

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

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

According to the procedure a judge can be removed by court

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

According German Judge Act

21. What are the grounds for removal?

Infringement of constitution by constitutional court, disciplinary offence by disciplinary court

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, but cf. 21

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).

Authority is a Supreme State Authority which means full independence regarding budget and staff administration

### 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

*The authority has any power given to it by "international or European Law Acts" (§ 24 I 4 BlnDSG)*

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.)

No

**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:

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

details: Approval of International Data Transfers into Third Countries in private sector

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

Tion by details:complaints handling,

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

details:private sector : Administrational fines up to 250 000 €, right to demand for prosecution by penal court, public sector only recommandations

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

details:

(f) public education YES/NO

details: Voluntarily by staff members at universities, academies etc.

(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.

**Other materials**

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

[Empty box for attachments]

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

URL: [www.privacy.de](http://www.privacy.de)

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.privacy.de](http://www.privacy.de)

**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](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

**Berlin Data Protection Commissioner, Germany**

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  
**DP in public and private sectors, FOI in public sector.**

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  
**The legal guarantees of independence, as described, seem stronger than those described in applications of other German state DP commissioners.**

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  
**The answers in the application are rather confusing on this point but am satisfied as to international compatibility.**



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?

**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

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: **17 July 2002**

Marie Georges

Date: 18 juillet 2002

Date:

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