

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

- Name: Korea Information Security Agency (KISA) - Postal address: 78, Garak-Dong, Songpa-Gu, Seoul, Korea 138-803

2. Contact person for this application:

(a) Name

- Soonjoung Byun

(b) Email address

- soonjoung@kisa.go.kr

(c) Direct telephone number

- 82-2-105-5221

(d) Fax contact

- 82-2-105-5229

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)

- The Korea Information Security Agency (KISA) is the commissioner and board as well..

5. Is the Authority a public body? YES, It is.

6. Geographical jurisdiction

- The entire country is under the jurisdiction of KISA

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)

- KISA's jurisdiction covers only profit-making entities in private sector such as communication providers, website operators, travel agencies, airline carriers, hotels and educational institutes, etc

8. Is the role of the Authority mainly concerned with data protection and privacy?
-> YES, It is.

Legal basis

9. Title of law under which the Authority is constituted

- The Act on Promotion of Information and Communication Network Utilization and Data Protection (hereinafter referred to as 'Data Protection Act')
- Presidential Decree of Data Protection Act

10. Is this principally a data protection law? YES, It is.

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

- Data Protection Act : statute
- Presidential Decree : executive order

12. Which body made the law?

- An Act is introduced by The National Assembly or the administration, passed by the National Assembly and promulgated by the president
- The Presidential Decree is resolved by the Cabinet Council and promulgated by the president

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

- The National Assembly of the republic of Korea

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.)

- President of KISA and Members of Personal Information Dispute Mediation Committee (PIDMC: Total 15 people) are appointed by the Minister of Information and Communication.
- Members of KISA and secretariat of PIDMC are selected by the president of KISA.

15. What process is followed?

- The members of PIDMC shall be appointed by the Minister of Information and Communications from among the persons falling under any of the following subparagraphs under the conditions as prescribed by the presidential decree.
1) persons who presently serve or have served in universities as associate professors or higher and in publicly recognized research institutes as researchers with their positions corresponding to the former and majored in a field relating to the protection of personal information;
2) public officials of Grade IV or higher persons who presently work or have worked in public institutions with their positions corresponding to the former and have experiences in dealing with the affairs of the protection of personal information
3) persons who hold qualifications of judges, prosecutors, or attorneys-at-law;
4) persons who presently work or have worked for the providers of information and communications services or the organization of the providers of information and communications services as officers; and
5) Persons recommended by nonprofit nongovernmental organizations established pursuant to Article 2 of the assistance for Nonprofit Non-governmental Organization Act.

16. For what term are appointments made?

- The term of President of KISA and committee chairman is three years and reappointment is possible.

17. Does the law under which the Authority operates explicitly state that it acts independently?

-> YES, it does

18. May the member(s) be removed before expiry of their term?

-> YES, they may

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

- Minister of Information and Communication

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

- Limited reasons providing the permitted grounds for removal are specified in the Data Protection Act

21. What are the grounds for removal?

- Data Protection Act Article 34(guarantee of Member's statue)
· In cases that he/she is sentenced to the suspension of qualification or a heavier punishment
· In cases that he/she is unable to perform his duties due to mental or physical incompetence

22. Does the Authority possess the following powers (briefly describe and give statutory references)

(e) to initiate an investigation with seeking provision YES, it does

- The personal information protection center within KISA investigates the facts regarding the received complaints(Data Protection Act Article 52)
- authority in connection with submission of materials or inspection of the business place as prescribed in Data protection act Article 55(1) and (2) is delegated to the KISA (Data protection Act Article 56, Presidential Decree Article 27)

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

- In practice, KISA reports to the Ministry of Information and Communication but this is not stipulated in the law.

(g) to make public statements YES, it does

- For the most part, MIC and KISA often distribute resources concerning violations to all the presses and broadcasting companies so that violations are made publicly available. The public can obtain the information regarding violations of the privacy laws and regulations by watching the presses and the news, by surfing many websites and by finding investigative reports out.
- Press releases which KISA has made can be found at www.e-privacy.or.kr/english/main.html

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

-> No, it doesn't

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).

- None

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, it does

If "yes", which of the following does it principally implement?

- | | | |
|-----|--|---------------|
| (a) | OECD Guidelines (1980) | <u>YES/NO</u> |
| (b) | (i) Council of Europe Convention No 108 (1981) | <u>YES/NO</u> |
| | (ii) Council of Europe Additional Protocol (8 November 2001) | <u>YES/NO</u> |
| (c) | UN Guidelines (1990) | <u>YES/NO</u> |
| (d) | EU Directive (1995) | <u>YES/NO</u> |

26. Does the law instead, or additionally, implement any general or specific international instrument? (If so, list the international body and the instrument)

- None

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.)

-> No, they haven't

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, it does

- KISA has been regularly monitoring both by checking internet homepage and by conducting on-site inspection whether businesses stipulated by the Data Protection Act abide by the law(Data Protection Act Article 55 and Article 56, Presidential Decree Article 26)
- KISA also investigates the facts regarding the received complaints and advises corrections thereof in cases of minor violations

(b) Approvals (e.g. prior-checking, notification) No, it doesn't

- Data Protection Act does not obligate prior-checking or notification to the businesses in private sector. But the introduction of PIA has been discussing positively these days.

(c) Redress for individuals (e.g. complaints, conciliation enforcement) YES, it does

- The Personal Data Protection Center and Personal Information Dispute Mediation Committee deal with redressing for individuals. Center receives and processes various complaints associated with personal information infringements and give counsel to the data protection queries. PIDMC mediate disputes involving personal information in order to reach a settlement(Data Protection Act Article 33)

(d) Sanctions available to Authority (for example, prosecution and enforcement) YES, it does

- In the Korean legal system, anyone may report violations to the police or the prosecution.
- KISA can provide MIC, police and prosecutor's office with the result of the investigation regarding the received complaints. MIC could impose a fine up to \$7,600(10,000,000 won)

(e) Guidance (e.g. compliance advice) YES, it does

- KISA has drafted industry-specific guidelines on personal data protection, distributed them to businesses and helped the businesses comply with the Data Protection Act

(f) Public education YES, it does

- KISA shall carry out the publicity, education, and training for the protection of information(Data Protection Act Article 52) and carry out the publicity and education for the protection of data protection infringement (Presidential Decree Article 26)

(g) Policy advice for government YES, it does

- The Presidential Decree Article 26 requires KISA to study and research on policies and systems for information protection and suggest policies

- (h) Studies or research (e.g. into developing technologies, privacy issues)
YES, it does

- KISA shall carry out the survey and research of policies and systems for the protection of information by the Data Protection Act article 52

Additional comments

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

- KISA operates Personal Data Protection Centre and Secretariat of PIDMC.
- KISA receives complaints regarding data protection infringements and gives counsel on data protection queries. In particular, PIDMC is operated to assure independence for disputes which need to be settled.
- Regarding question no 17(independency of KISA)
· KISA regulates profit-making entities in private sector. And KISA gets budget for monitoring and controlling data protection activities of them from MIC, **not from subjects which KISA (Data protection act) regulates.**
So KISA can regulate data protection infringement activities with no concerns of being dismissed or cut the budget as a result of the decision KISA has made.
That means KISA acts independently even though you can not find any provision that explicitly states independency of KISA in the Data Protection Act.
- Regarding question no 23(immunity from legal suit)
· Immunity from litigation is not recognized in the Korean legal system, and even National Human Rights Commission Act does not state such immunity.

Other materials

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

- Data protection Act/2003 annual report

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

URL: www.e-privacy.or.kr/english/main.html

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: <http://www.e-privacy.or.kr/english/main.html>

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

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

KOREAN INFORMATION SECURITY AGENCY
(KISA)

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

No

Don't know

Notes

KISA's jurisdiction is exclusively privacy sector ("profit making entities in the private sector"). (Data protection in the public sector is apparently covered by another Ministry pursuant to the "Act on the Protection of Personal Information maintained by Public Authorities".) This is an unusual situation and we have not previously had an application from a DPA with a purely private sector jurisdiction. However, we have accredited DPAs with exclusively public sector coverage and I do not therefore think this should be a bar to accreditation. The coverage is clearly a significant part of the private sector and not merely a limited or specialised part of it. On balance, I consider the coverage sufficiently broad to warrant consideration for accreditation.

I agree that the situation whilst novel is comparable with limited jurisdictions affecting the public sector and should be treated no differently

Interestingly, it cited educational institutions as 'for profit' organisations which may mean that it does extend to some sectors traditionally regarded as

public sector in other jurisdictions.

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

Yes

Notes
Data Protection Act - statute
Decree of Data Protection Act - executive order

Agreed

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

All the normal protections seem present

Agreed

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
Principally the OECD Guidelines

Note: Korea became an OECD member in 1996

Agreed

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

No

Don't know

Notes

The absence of 'approvals' is insufficient to put this in doubt.

7 Does the Sub-group recommend accreditation?

Yes

No

Notes

8 If accreditation is recommended what is the

Notes

accreditation as?

National authority (within the UN criteria)

“Republic of Korea” is the UN listed title for South Korea

- 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

I recommend accreditation. However, if the issue of scope of competence (i.e. the limitation to the private sector) is seen by others as a problem, I would recommend that further information be obtained about data protection in the public sector.

Alternatively, if need be, a recommendation for accreditation could be accompanied by an indication that if an application is received from an eligible DPA covering the public sector KISA's accreditation would need to be reviewed at the same time.

I agree on accreditation. There will clearly be an issue of who is the 'national' authority if one covering the whole of the public sector was to apply. I think that this could be drawn to the attention of the Conference but no more as presumably 'public sector only' jurisdictions could be affected in the same way I if the situation is reversed.

- 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

Notes

conference host, observer status is granted?

Not Applicable

Yes

Not

If more information is required what is this:

Signed on behalf of the Sub-group:

Blair Stewart

Date: **7 May 2004**

Jonathan Bamford

Date: **2nd June 2004**

Date:

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