

**JUSTICE AND
GOOD GOVERNANCE ISSUES**

**EXPLANATORY MEMORANDUM TO THE DRAFT MODEL BILL ON THE
PROTECTION OF PERSONAL INFORMATION AND THE RECOMMENDATION
FROM SENIOR OFFICIALS TO LAW MINISTERS**

1. At the 2002 Commonwealth Law Ministers and Senior Officials Meeting in Kingstown, St. Vincent and the Grenadines, Senior Officials agreed that the Model Bill on the Protection of Personal Information needed more reflection on the balance between privacy and the legitimate needs of governments in respect of law enforcement and security. Senior Officials therefore recommended that Law Ministers refer back the matter for further consideration and asked the Secretariat to prepare an amended draft in light of written comments from governments. On the basis of this request, the Commonwealth Secretariat sought expert views from the UK Information Commissioners Office. The following analysis was received from them and is based on UK legislation (the UK Data Protection Act 1998).

2. The UK's Data Protection Act 1998 is based on a set of enforceable standards for handling personal information, 'the data protection principles', and on a set of individuals' rights. The standards for handling personal information require that personal information be:

- obtained and handled fairly and lawfully;
- obtained for specified and lawful purposes;
- adequate, relevant and not excessive;
- accurate and up-to-date;
- not kept for longer than is necessary;
- processed in accordance with individuals' rights;
- kept secure;
- not transferred overseas unless there is adequacy of protection.

3. The Data Protection Act 1998 gives the individual a right to:

- gain access to information held about him or her;
- prevent records being used for direct marketing;
- appeal decisions made solely by automatic means;
- obtain compensation in certain circumstances;
- have records rectified, blocked or erased in certain circumstances.

4. The Act also contains certain 'conditions for processing'. These are essentially 'gateways' that restrict the purposes for which personal information can be processed. These have a particular effect on the processing of sensitive personal information, such as that concerning the offences that a person has committed. The way the legislation works in the UK is that all the information standards must be adhered to, and all the individuals' rights delivered, unless a particular exemption applies. However, the Act contains several exemptions that can be applied in the contexts of law enforcement and national security.

Law Enforcement

5. Personal information processed for the prevention of crime or for the apprehension or prosecution of offenders, such as information contained in intelligence records held by the police, is exempt from the requirement to obtain information fairly and lawfully. The normal standard under data protection law is for the individual to be informed when and why information about him or her

is being collected. Clearly it would not be possible for policing to be carried out effectively should law enforcement agencies always be required to tell individuals that information about them has been obtained, for example as part of an on-going policing operation. However, the exemption only applies to the extent to which the requirement to information fairly and lawfully would *prejudice* the purposes of crime prevention or the apprehension or prosecution of offenders. This means in practice that law enforcement agencies are, in some circumstances, free to collect information about individuals covertly but are, in general, bound by the legislation's transparency provisions.

6. As mentioned above, the UK legislation contains certain 'conditions for processing' which, in effect, places additional restrictions on the processing of personal information, particularly sensitive information. However, there is a condition that can be satisfied where the processing is necessary for the administration of justice, for the exercise of functions conferred under an enactment or for the exercise of crown or governmental functions. In general, the processing of personal information done by law enforcement agencies as part of their official duties will fall within the terms of this condition for processing. This aspect of compliance with the law is not, therefore, generally a problem for law enforcement agencies.

7. There is also an exemption from the right of subject access in circumstances where to grant access would prejudice the purposes of crime prevention or the apprehension or prosecution of offenders. In practice, this means that where an individual applies for access to records held by a law enforcement agency, the agency must make a careful assessment of the personal information it holds about the applicant and must decide whether or not to release some, all or none of the information. Typically an individual will be provided with his or her criminal record and with some locally held intelligence data. The individual will not, though, be provided with information about on-going cases where its provision would prejudice crime prevention or the apprehension or prosecution of offenders.

8. It should be noted that the UK Information Commissioner receives a considerable number of complaints and queries about access to, and the contents of, law enforcement agencies' records. They often detect problems, for example where access has been denied where there is no proper basis for doing so, or where one person's file has been confused with that of another. They frequently encounter problems to do with the timeliness and quality of intelligence data held by law enforcement agencies. In the UK certain offences become 'spent' for the purposes of the Rehabilitation of Offenders Act 1974, yet sometimes police forces fail to record properly that an offence has become spent; this can clearly have a very serious effect on the individual. They also encounter problems where details about an individual's offences have simply been recorded wrongly, or where an unsubstantiated allegation is recorded as if proven fact. Given these problems, it seems that a statutory right of access to law enforcement agencies' files, and the adherence to good information handling standards by law enforcement agencies, make these agencies more transparent and accountable than they would otherwise be. Ultimately law enforcement agencies' compliance with the rules of data protection is a key safeguard for the functioning of a democracy. There seems to be no evidence to suggest that the application of the Data Protection Act 1998 to law enforcement agencies prevents their effective functioning. As explained earlier, there are exemptions that allow a proper balance to be struck between the law enforcement agencies' need to collect and use information about individuals and individuals' rights in respect of information kept about them. There is no reason why these exemptions should not be replicated in law to be used in Commonwealth countries.

9. To summarise, the UK Data Protection Act 1998 contains exemptions from:

- the 1st data protection principle (fair/lawful processing, including obtaining);
- the right of subject access; and
- the Act's non-disclosure provisions.

These exemptions are qualified by a 'prejudice test'. This means, for example, that subject access should normally be granted, but can be withheld where to provide access would prejudice the prevention or detection of crime or the apprehension or prosecution of offenders. It seems that our model law broadly replicates the provisions found in the UK law - see for example s.11(c) of our model law, although the prejudice test is absent. Similarly s.13(1)(f)(i),(ii) of our model law will have an effect similar to that of s.29(3)(a) of the UK law, and it does contain a test of necessity, which though different to a test of prejudice, could have a similar effect. It is clear from the UK law that exemptions relating to security and law enforcement need not be particularly complicated or elaborated. In short, the exemptions in the UK law negate the transparency provisions (fair notice, access rights) and the provisions prohibiting the disclosure of information where the application of those provisions would prejudice the purposes of law enforcement.

National Security

10. The UK's National Security agencies enjoy very wide exemption from the provisions of the Data Protection Act 1998 where exemption is required for the purpose of safeguarding national security. There is exemption from all the data protection principles, from all the individuals' rights, from the Information Commissioner's powers of enforcement and from the Act's prohibition on obtaining personal information unlawfully. Cumulatively, the effect of these exemptions is that the Data Protection Act 1998 has no significant impact on the work of the UK's National Security agencies.

11. **Note: The UK Data Protection Act 1998 deals with the private and public sectors.** The draft model law on the protection of personal information applies only to the private sector. Law enforcement and security agencies are normally public sector bodies. The main data protection rules applying to policing and security agencies are set out in the Model Law on Privacy, which applies to the public sector. The Draft Model Bill on the Protection of Personal Information does not therefore deal with the activities of policing and security agencies to any great extent, nor need it, given that these agencies are not private sector bodies. However, on occasion private sector bodies do become involved in security and law enforcement matters, for example where a private company finds evidence of crime and needs to disclose personal information to the police for law enforcement purposes.

12. On the basis of these findings, Senior Officials of Commonwealth Law Ministries at their meeting in London, 18-20 October 2004, raised points of clarification on the rationale for the definition of the word 'individual' and enquired into the legal basis for having provisions regarding information kept extending to deceased persons. Questions were also asked to clarify the reasons why the model law should be extended to cover unstructured files and whether information would be disclosed to a third party having parental authority over a minor. The delegates also raised questions about whether it would be worthwhile to adopt a consolidated law instead of two separate model laws, one for the public and private sector. One of the concerns raised by countries was over the issue of striking a balance between preserving a police investigation and the rights and interests of an individual who may need to preserve evidence to prove his innocence.

13. It was noted that the decision of whether provisions regarding information should be extended to unstructured information was a decision for individual member countries. Delegates were cautioned however that definitions should be comprehensible and workable in practice, and that information to which the Act applied needed to be useful information, or information which has some power to it, hence the need for its protection. Members were also advised that there were no hard and fast rules regarding disclosure but that decisions should be made based on the circumstances of each situation and what was reasonable in the circumstances. It was acknowledged that some areas of the law required a balancing test, but that UK law usually acted in favour of the

police in situations where giving information to a person would likely prejudice the prevention or detection of crime.

14. With reference to suggestions made for consolidation of information, it was acknowledged that there was need for public and private sector legislation to be compatible in their ability to work together but at the same time recognising the different regulatory needs of institutions in each sector.

15. Senior Officials recognised the need to encourage global harmonisation of privacy laws in order to ensure that the expectation of citizens to have their personal information protected, regardless of where they travel, was realised. Overall, there was wide support for the proposed bill in that its provisions successfully balanced the interests of law enforcement and national security organisations.

16. Law Ministers are invited to approve the attached model bill (**Annex**).

**DRAFT MODEL LEGISLATIVE PROVISIONS
PROTECTION OF PERSONAL INFORMATION ACT [.....]**

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BILL

for

AN ACT to make provision for the recognition of the privacy of individuals by protecting personal information processed by private organisations, and for connected matters.

BE IT ENACTED by the Parliament of [name of country] as follows:

PART I

PRELIMINARY

- | | |
|----------------|---|
| Short title | 1. This Act may be cited as the Protection of Personal Information Act, [year of enactment]. |
| Commencement | 2. This Act shall come into operation on a day to be appointed by the Minister, by Order published in the <i>Gazette</i> . |
| Object of Act | 3. The object of this Act is to regulate the processing of personal information by private organisations in a manner that recognises the right of privacy of individuals with respect to their personal information and the need of those organisations to process personal information for purposes that a reasonable person would consider appropriate in the circumstances. |
| Interpretation | 4. In this Act -

“agent”, in relation to an organisation, means a person, whether or not the person is employed by the organisation and whether or not the person is being remunerated, when the person acts for or on behalf of the organisation in performing functions with respect to personal information;

“collect”, in relation to actions of an organisation that has custody or control of personal information means to gather, acquire or obtain the information by any means from any source outside the organisation or its agents, and “collection” has a corresponding meaning;

“correct”, in relation to personal information, means to alter that information by way of correction, deletion, or addition; and
“correction” has a corresponding meaning;

“data” means information which -

(a) is recorded with the intention that it should be processed; or
(b) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system;

“de-identify”, in relation to personal information of an individual, means to remove any information that –

(a) identifies the individual; |

- (b) can be manipulated by a reasonably foreseeable method to identify the individual; or
- (c) can be linked by a reasonably foreseeable method to other information that identifies the individual or that can be used or manipulated by a reasonably foreseeable method to identify the individual;

“disclose”, in relation to personal information in the custody or under the control of an organisation, means to make the information available to an organisation that is not an agent of the disclosing organisation, and “disclosure” has a corresponding meaning;

“individual” means, in relation to personal information, the individual, whether living or deceased, with respect to whom the information is or was collected, used or disclosed;

“head” in relation to an organisation means the person responsible for the overall management of the organisation including its policies and practices;

“information practices” in relation to an organisation, means the policy of the organisation for actions in relation to personal information, including -

- (a) when, how and the purposes for which the organisation is to collect, use, modify, disclose, retain or dispose of personal information;
- (b) the administrative, technical and physical safeguards and practices that the organisation maintains with respect to the information;

“investigative body” means a prescribed person or body that is legally authorised in [*name of country*] to carry out any investigation relating to the enforcement of law;

“Minister” means the Minister who has been assigned responsibility for [*information/public administration*] under the Constitution;

“organisation” includes a body corporate, an individual, a partnership or unincorporated association;

“personal information” means information or data about an identifiable individual whether or not recorded in any form, including, without restricting the generality of the foregoing –

- (a) information relating to the race, national or ethnic origin, religion, age or marital status of the individual;
- (b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- (c) any identifying number, symbol or other particular assigned to the individual;

- (d) the address, fingerprints or blood type of the individual;
- (e) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual;
- (f) correspondence sent by the individual that is explicitly or implicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence;
- (g) the views or opinions of any other person about the individual;
- (h) information that can be manipulated by a reasonably foreseeable method to identify the individual; or
- (i) information that can be linked by a reasonably foreseeable method to other information that identifies the individual or that can be manipulated by a reasonably foreseeable method to identify the individual;

“prescribed” means prescribed by regulation made under this Act;

“process”, in relation to information or data, means obtain, record or hold the information or data or carry out any operation or set of operations on the information or data, including -

- (a) organisation, adaptation or alteration of the information or data;
- (b) retrieval, consultation or use of the information or data;
- (c) disclosure of the information or data by transmission, dissemination or otherwise making available; or
- (d) alignment, combination, blocking, erasure or destruction of the information or data;

and “processed” “processes” and “processing” shall be construed accordingly;

“relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible;

“record” means a record of information in any form or in any medium, whether in written, printed, photographic or electronic form or otherwise, but does not include a computer program or other mechanism that can produce a record;

“use”, in relation to actions of an organisation that has custody or control of personal information or data, means to handle or deal with the information or data, including to transfer the information or data, to an agent of the organisation, but does not include to disclose the information or data;

“Privacy Commissioner” means the Privacy Commissioner appointed under section 16 of the Privacy Act, [*year of enactment*];

Application of Act	<p>5.(1) This Act shall apply to every private organisation in respect of personal information that –</p> <ul style="list-style-type: none"> (a) the organisation processes in the normal course of its business or for professional or commercial purposes; (b) is about an employee of the organisation and that the organisation processes in connection with its business. <p>(2) This Act shall not apply to –</p> <ul style="list-style-type: none"> (a) any public authority to which the Privacy Act [<i>year of enactment</i>] applies; (b) any individual in respect of personal information that the individual processes for personal or domestic purposes and does not process for any other purpose; (c) any organisation in respect of personal information that the organisation processes for journalistic, artistic or literary purposes and does not process for any other purpose.
Saving of certain other enactments	<p>6. This Act shall not affect the operation of any enactment that makes provision with respect to the processing of personal information and is capable of operating concurrently with this Act.</p>

PART II

PROCESSING OF PERSONAL INFORMATION

Appropriate purpose	<p>7. An organisation may collect, use or disclose personal information only for purposes that a reasonable person would consider appropriate in the circumstances.</p>
Requirement of knowledge and consent	<p>8.(1) Subject to sections 11, 12 and 13, an organisation shall not collect, use or disclose personal information about any individual without the knowledge and consent of that individual.</p> <p>(2) An individual may, with reasonable notice in writing, withdraw the consent referred to in subsection (1) at any time, subject to legal and contractual restrictions. The organisation shall inform the individual of the implication of such withdrawal.</p>
Collection of personal information	<p>9.(1) An organisation shall identify the purpose for which it collects personal information at or before the time such information is collected.</p> <p>(2) An organisation shall document the purposes for which personal information is collected in order to comply with section 21(5)(d).</p> <p>(3) An organisation shall not collect personal information unless –</p> <ul style="list-style-type: none"> (a) the information is collected for a lawful purpose directly related to a function or activity of the organisation; and (b) the collection of the information is necessary for, or directly related to, that purpose.

(4) An organisation shall not collect personal information –

- (a) by unlawful means; or
- (b) by means that, in the circumstances of the case –
 - (i) are unfair; or
 - (ii) intrude to an unreasonable extent upon the personal affairs of the individual concerned.

Source of personal information

10.(1) An organisation shall collect personal information directly from the individual concerned, unless –

- (a) the individual consents to having the organisation collect the information from the person who has custody or control of it;
- (b) the individual consents to having the organisation that has custody or control of the information disclose it;
- (c) the person who has custody or control of the information is authorised at law to act on behalf of the individual and consents to the disclosure of the information to the organisation;
- (d) this Act authorises the organisation to collect the information; or
- (e) the organisation is authorised by another Act or at law to collect the information in a manner other than directly from the individual.

(2) At or before the time, or if that is not practicable, as soon as practicable after, an organisation collects personal information from an individual under subsection (1), the organisation shall take such steps as are, in the circumstances, reasonable to ensure that the individual concerned is aware of –

- (a) the purpose for which the information is being collected;
- (b) the fact that the collection of the information is authorised or required by or under law, if such collection is so authorised or required; and
- (c) the intended recipients of the information.

Collection without knowledge or consent

11. An organisation may collect personal information without the knowledge or consent of the individual, where –

- (a) the collection is clearly in the interests of the individual and consent cannot be obtained in a timely manner;
- (b) it is reasonable to expect that the collection with the knowledge and consent of the individual will prejudice the purpose of the collection or compromise the availability or accuracy of the information;
- (c) the collection is reasonable for purposes relating to the investigation of the breach of the law or an agreement;
- (d) the collection is solely for journalistic, artistic or literary purposes; or
- (e) the information is publicly available information.

Limits on use of personal information

12.(1) Where an organisation holds personal information that was collected in connection with a particular purpose, it shall not use that information for any other purpose unless –

- (a) the individual concerned authorises the use of the information for that other purpose;

- (b) use of the information for that other purpose is authorised or required by or under law;
- (c) the purpose for which the information is used is directly related to the purpose for which the information was collected;
- (d) the information is used -
 - (i) in a form in which the individual concerned is not identified; or
 - (ii) for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned;
- (e) the organisation believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or other person, or to public health or safety; or
- (f) use of the information for that other purpose is necessary -
 - (i) for the prevention, detection, investigation, prosecution or punishment of any offence or breach of law; or
 - (ii) for the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal.

(2) Where an organisation uses personal information for a new purpose, it shall document that purpose in order to comply with section 21(5)(d).

Limits on disclosure of personal information

13.(1) Where an organisation holds personal information, it shall not disclose the information to another person, body or agency (other than the individual concerned), unless –

- (a) the individual concerned has expressly or impliedly consented to the disclosure;
- (b) the disclosure of the information is required or authorised by or under law;
- (c) the disclosure of the information is one of the purposes in connection with which the information was collected, or is directly connected to that purpose;
- (d) the individual concerned is reasonably likely to have been aware or made aware under section 10(2)(c) that information of that kind is usually passed on to that person, body or agency;
- (e) the information is to be disclosed -
 - (i) in a form in which the individual concerned is not identified; or
 - (ii) for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
- (f) the organisation believes on reasonable grounds that disclosure of the information is necessary –
 - (i) to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or other person, or to public health or safety;
 - (ii) for the prevention, detection, investigation, prosecution or punishment of any offence or breach of law; or

- (iii) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal.

(2) Any person, body or agency to whom personal information is disclosed under subsection (1) shall not use or disclose the information for a purpose other than the purpose for which the information was given to that person, body or agency.

Condition for use or disclosure of personal information 14. An organisation shall only use or disclose personal information under section 12 or section 13, where such use or disclosure would not amount to an unreasonable invasion of privacy of the individual concerned, taking into account the specific nature of the personal information and the specific purpose for which it is to be so used or disclosed.

Use of personal information outside [name of country] 15.(1) An organisation shall not use, outside [name of country] personal information collected in [name of country] unless the organisation -

- (a) would be permitted under this Act to make the same use of that information in [name of country]; and
- (b) takes appropriate steps to preserve the confidentiality of the information and to protect the privacy of individuals.

(2) Nothing in this section affects the use of personal information that is required or authorised to be made under another Act.

Disclosure of personal information outside [name of country] 16.(1) An organisation shall not disclose personal information collected in [name of country] to an organisation outside [name of country] unless -

- (a) the organisation receiving the information performs functions comparable to the functions performed by a person to whom this Act would permit disclosure by the organisation disclosing the information in [name of country]; and
- (b) the organisation disclosing the information believes on reasonable grounds that the organisation receiving the information will take appropriate steps to preserve the confidentiality of the information.

(2) Nothing in this section affects a disclosure of personal information that is required or authorised to be made under another Act.

PART III

DUTIES OF ORGANISATIONS WITH RESPECT TO RECORDS OF PERSONAL INFORMATION

Accuracy of information 17.(1) An organisation that collects, uses or discloses personal information about an individual shall -

- (a) take all reasonable steps to ensure that whatever record it makes of the information is as accurate, complete and up-to-date as is necessary for the purposes for which it collects, uses or discloses the information, as the case may be;
- (b) take all reasonable steps to minimise the possibility that an organisation will use inaccurate personal information to make a decision about the individual.

(2) The organisation shall not update a record of personal information about an individual unless –

- (a) doing so is necessary to fulfil the purpose for which the organisation collected the information;
- (b) the individual consents to the updating; or
- (c) this Act or another law permits the updating.

Security of information

18.(1) An organisation shall take reasonable steps to ensure that personal information in its custody or control is protected against unauthorised use or disclosure and to ensure that the records containing the information are protected against unauthorised copying, modification or destruction.

(2) An organisation is responsible for personal information in its custody or control, including information that has been transferred to a third-party for processing. The organisation shall use contractual or other means to provide a comparable level of protection while the information is being processed by the third party.

(3) The question of what protection constitutes compliance with subsection (1) shall be determined in light of all the circumstances, including the sensitivity of the information, the amount of information and the format in which it is stored.

(4) Upon request, the organisation shall make available to any person a general description of the safeguards that it uses to protect personal information and to fulfil its obligations under subsection (1).

Note of uses and disclosures without consent

19.(1) An organisation shall make a note of all uses and disclosures that it makes of personal information about an individual without the individual's consent except if the individual would not be entitled to access to the information under section 22(1) or a record of the information under section 25(1).

(2) The organisation shall keep the note as part of the records of personal information about the individual that it has in its custody or under its control or in a form that is linked to those records.

Retention of records

20.(1) Subject to subsection (2), an organisation shall not retain a record of personal information after the purpose for which the organisation collected the information has been fulfilled unless –

- (a) another law requires the organisation to retain the record;
- (b) the organisation reasonably requires the record for purposes related to its operation; or
- (c) the regulations authorise the organisation to retain it.

(2) An organisation that has used a record of personal information about an individual to make a decision about the individual shall retain the record for such period of time as may be prescribed after making the decision, to allow the individual a reasonable opportunity to request access to the information.

(3) An organisation shall destroy or delete a record of personal information or de-identify it as soon as it is no longer authorised to retain the record under subsection (1).

Information practices

21.(1) An organisation that has custody or control of personal information shall have in place information practices that comply with the requirements of this Act and the regulations made thereunder.

(2) The organisation shall act in conformity with its information practices unless otherwise permitted by law.

(3) The organisation shall designate, as a contact person, an individual or individuals who are resident in [*name of country*] and who are employed by or in the service of the organisation or an agent of the organisation, to –

- (a) facilitate the organisation's compliance with this Act;
- (b) ensure that all persons who are employed by or in the service of the organisation are appropriately informed of their duties under this Act while employed by or in the service of the organisation;
- (c) respond to inquiries from the public about the organisation's information practices.

(4) An organisation shall make readily available to any person, in a form that is generally understandable, specific information about its policies and practices relating to the management of personal information.

(5) The information made available under subsection (4) shall include –

- (a) the name, address and other contact details of the organisation;
- (b) the name or title of the person or persons accountable for the organisation's policies and practices;
- (c) the means of gaining access to personal information held by the organisation;
- (d) a description of the type of personal information held by the organisation, including a general account of its use;
- (e) what personal information is made available to related organisations;
- (f) a copy of any brochures or other information that explain the organisations policies and practices or codes; and
- (g) the name or title of the person or persons designated under subsection (3), to whom any inquiry in relation to this Act can be forwarded.

PART IV

ACCESS TO PERSONAL INFORMATION

Right of
access to
personal
information

22.(1) Subject to this Part, an individual is entitled, in accordance with this Part, to access to personal information about the individual that is in the custody or under the control of an organisation, including information on its use and disclosure, unless –

- (a) the information relates to having an investigative body enforce any law or by-law, carry out an investigation relating to the enforcement of that law or by-law or gather information or intelligence for the purpose of enforcing that law or by-law;
- (b) the organisation is prohibited under subsection (6) from granting the individual access to the information;
- (c) the organisation has reasonable grounds to believe that the information relates to a breach of an agreement or a contravention of any law that has been, is being or is about to be committed;
- (d) the information is subject to legal privilege;
- (e) the information is collected or put together for the purpose of determining whether to commence a proceeding or for the purpose of conducting a proceeding or enforcing a judgment, order or award made in a proceeding;
- (f) granting the access could reasonably be expected to threaten the life or security of another individual;
- (g) granting the access would reveal confidential organisational information that could reasonably be expected to harm the organisation;
- (h) granting the access would be likely to reveal personal information of another individual who does not consent to granting the access and it is not possible to sever the requested information from the personal information of the other individual.

(2) If an organisation receives a request from an individual under section 23 for access to personal information that the organisation has previously disclosed to the government, an agent of that government or to an investigative body, the organisation shall, without delay, give written notice to the person or body who received disclosure of the information stating that the individual has made the request.

(3) Within thirty days of receiving the notice, the person or body who receives the notice shall notify the organisation whether it objects to having the organisation grant the individual's request for access.

(4) An investigative body which received disclosure of the information may object to having the organisation grant the individual's request for access only if it is of the opinion that granting the request could reasonably be expected to be injurious to the enforcement of any law or the gathering of intelligence for the purpose of enforcing that law.

(5) The organisation shall not, under section 23(3), respond to the individual's request for access until the earlier of –

- (a) the day on which it receives notification of an objection made under subsection (4); or
- (b) thirty days from the time of giving the notice described in subsection (3).

(6) If a person or body, objects to having the organisation grant the individual's request for access under subsection (5), the organisation shall not grant the individual access to the requested personal information.

Procedure for access

23.(1) To exercise a right to access to personal information under subsection 22(1), including information on its use and disclosure, an individual shall make a written request for access to the organisation that has custody or control of the information.

(2) If the individual requests the organisation for assistance in preparing the request for access, the organisation shall assist the individual.

(3) Subject to subsection (4) and to section 24, as soon as possible in the circumstances but not later than thirty days after receiving the request, the organisation shall –

- (a) grant the individual access to the requested personal information in a generally understandable format unless the organisation believes, on reasonable grounds, that the individual is not entitled under this Act to access to the information;
- (b) give a written notice to the individual stating that the organisation does not have custody or control of the requested personal information, if that is the case, and specifying the identity of the organisation that has custody or control of the information, if that is known; or
- (c) give a written notice to the individual stating that the organisation is refusing the request, in whole or in part, specifying the reason for the refusal and stating that the individual is entitled to make a complaint about the refusal to the *[Privacy Commissioner]*.

(4) Within thirty days after receiving the request, the organisation may extend the time limit set out in subsection (3) for a further period of time of not more than thirty days if –

- (a) meeting the time limit would unreasonably interfere with the activities of the organisation; or
- (b) the time required to undertake the consultations necessary to reply to the request would make it not reasonably practical to meet the time limit.

(5) If the organisation extends the time limit under subsection (4), the organisation shall give the individual a written notice of the extension before the time limit set out in subsection (3) expires, setting out the length of the extension and the reason for the extension.

(6) An organisation that reasonably believes that a request for access to personal information is frivolous or vexatious or made in bad faith may refuse to grant the individual access to the requested information.

(7) An organisation that does not grant an individual access to personal information under this section because it believes, on reasonable grounds, that the individual is not entitled under this Act to access to the information may state in the notice that it is required to give under subsection (3)(c) that it refuses to confirm or deny that the information exists.

(8) If the organisation does not reply to the request within the time limit or before the extension, if any, expires, the organisation shall be deemed to have refused the individual's request for access.

(9) If the organisation refuses or is deemed to have refused the request, in whole or in part, the individual is entitled to make a complaint about the refusal to the [Privacy Commissioner] under Part VI.

(10) An organisation shall not grant an individual access to personal information under this section without first taking reasonable steps to be satisfied as to the individual's identity.

Fees for access 24. (1) As a condition of granting the access to personal information that an individual requests under this section, an organisation may require the individual to pay a reasonable fee determined in accordance with the regulations if –

- (a) it informs the individual of the approximate amount of the prescribed fee before granting the access;
- (b) within a reasonable time of receiving the information mentioned in clause (a), the individual does not notify the organisation that he or she withdraws the request; and
- (c) the organisation has not used the personal information to deny the individual a benefit or to increase any charge that the organisation imposes on the individual in dealing with the individual.

(2) The organisation shall waive the payment of all or part of the fee, where the organisation determines that it is fair and equitable to do so after considering –

- (a) whether the payment will cause financial hardship for the applicant; and
- (b) all other matters relating to fees that may be prescribed.

Copy of record 25.(1) If an organisation grants an individual access to personal information under this section and if the organisation has made a record of the information, it shall, at the time of granting the access, give the individual a copy of the record or an opportunity to examine the record.

(2) If, after exercising an opportunity to examine the record under subsection (1), the individual requests a copy of part or all of the record, the organisation shall give the individual a copy of those portions of the record that it would be reasonably practical to reproduce, given their length and nature.

Sensory disability	<p>26. (1) An organisation shall give access to personal information in an alternative format to an individual with a sensory disability who has a right of access to personal information under this Part and who requests that it be transmitted in the alternative format if –</p> <ul style="list-style-type: none"> (a) a version of the information already exists in that format; or (b) its conversion into that format is reasonable and necessary in order for the individual to be able to exercise rights under this Part. <p>(2) In this section, “alternative format” with respect to personal information means a format that allows a person with a sensory disability to read or listen to the personal information.</p>
Duty to sever	<p>27. (1) An organisation shall not give an individual access to personal information if doing so would be likely to reveal personal information about a third party. However, if the information about the third party is severable from the record containing the information about the individual, the organisation shall sever the information about the third party before giving the individual access.</p> <p>(2) Subsection (1) does not apply if the third party consents to the access or the individual needs the information because of a threat to the individual’s life, health or security.</p>
Correction of personal information	<p>28. (1) Where the record of an organisation to which access has been given under this Act contains personal information of a person and that person claims that the information is incomplete, incorrect or misleading, the organisation may, subject to subsection (2), on the application of that person, correct the information upon being satisfied of the claim.</p> <p>(2) An application under subsection (1) shall –</p> <ul style="list-style-type: none"> (a) be in writing; and (b) as far as practicable, specify – <ul style="list-style-type: none"> (i) the record of personal information that is claimed to require correction; (ii) the information that is claimed to be incomplete, incorrect or misleading; (iii) whether the information is claimed to be incomplete, incorrect or misleading; (iv) the applicant’s reasons for so claiming; and (v) the correction requested by the applicant. <p>(3) To the extent that it is practicable to do so, the organisation shall, when making any correction under this section to personal information in a record, ensure that it does not obliterate the text of the record as it existed prior to the correction.</p> <p>(4) Where an organisation is not satisfied with the reasons for an application under subsection (1), it may refuse to make any correction to the information and inform the applicant of its refusal together with its reasons for so doing.</p>

PART V

INVESTIGATION OF COMPLAINTS

Receipt and investigation of complaints

29. (1) Subject to this Act, the [Privacy Commissioner] shall receive and investigate a complaint from any person in respect of any matter relating to –

- (a) the collection, retention or disposal of personal information by an organisation;
- (b) the use or disclosure of personal information held by an organisation;
- (c) the refusal by an organisation to grant access to personal information under this Act; or
- (d) the refusal by an organisation of an application to correct the information.

(2) Nothing in this Act precludes the [Privacy Commissioner] from receiving and investigating complaints of a nature described in subsection (1) that are submitted by a person authorised by the complainant to act on behalf of the complainant, and a reference to a complainant in any other section includes a reference to a person so authorised.

(3) Where the [Privacy Commissioner] is satisfied that there are reasonable grounds to investigate a matter under this Act, the [Commissioner] may initiate a complaint in respect thereof.

Mode of complaint

30.(1) A complaint under this Act shall be made to the [Privacy Commissioner] in writing unless the [Commissioner] authorises otherwise.

(2) The [Privacy Commissioner] shall give such reasonable assistance as is necessary in the circumstances to enable any person who wishes to make a complaint to the [Commissioner], to put the complaint in writing.

Notice of investigation

31. Before commencing an investigation of a complaint under this Act, the [Privacy Commissioner] shall notify the head of the organisation concerned of the intention to carry out the investigation and shall inform such head of the substance of the complaint.

Regulation of procedure

32.(1) Subject to this Act, the [Privacy Commissioner] may determine the procedure to be followed in the discharge of any duty or the performance of any function of the [Commissioner] under this Act.

(2) The functions of the Privacy Commissioner set out in section 21 of the Privacy Act, [year of enactment] shall, *mutatis mutandis*, be the functions of the [Commissioner] under this Act.]

Investigations in private

33.(1) Every investigation of a complaint under this Act by the [Privacy Commissioner] shall be conducted in private.

(2) In the course of an investigation of a complaint under this Act by the [Privacy Commissioner], the person who made the complaint and the head of the organisation concerned shall be given an opportunity to make representations to the [Commissioner], but no one is entitled as of right to be present during, to have access to, or to comment on, representations made to the [Commissioner] by any other person.

Powers of
[Privacy
Commissioner]
in carrying out
investigations

34.(1) The [Privacy Commissioner] has, in relation to the carrying out of the investigation of any complaint under this Act, power -

- (a) to summon and enforce the appearance of persons before the [Commissioner] and compel them to give oral or written evidence on oath and to produce such documents and things as the [Commissioner] deems requisite to the full investigation and consideration of the complaint, in the same manner and to the same extent as a superior court of record;
- (b) to administer oaths;
- (c) to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as the [Commissioner] sees fit, whether or not the evidence or information is or would be admissible in a court of law;
- (d) to enter any premises occupied by an organisation on satisfying any security requirements of the organisation relating to the premises;
- (e) to converse in private with any person in any premises entered pursuant to paragraph(d) and otherwise carry out therein such inquiries within the power of the [Commissioner] under this Act as the [Commissioner] sees fit; and
- (f) to examine or obtain copies of or extracts from books or other records found in any premises entered pursuant to paragraph(d) containing any matter relevant to the investigation.

(2) Notwithstanding any other Act of Parliament or any privilege under the law of evidence, the [Privacy Commissioner] may, during the investigation of any complaint under this Act, examine any information recorded in any form held by an organisation and no information that the [Commissioner] may examine under this subsection may be withheld from the [Commissioner] on any grounds.

(3) Any document or thing produced pursuant to this section by any person or organisation shall be returned by the [Privacy Commissioner] within ten days after a request is made to the [Commissioner] by that person or organisation, but nothing in this subsection precludes the [Commissioner] from again requiring its production in accordance with this section.

Dispute
resolution

35. Where, in the course of an investigation of a complaint under this Act by the [Privacy Commissioner], the [Commissioner] is of the view that it may be possible to secure a settlement between any of the parties concerned and, if appropriate, a satisfactory assurance against the repetition of any action that is the subject matter of the complaint or the doing of further actions of a similar kind by the person or organisation concerned, the [Commissioner] may, without investigating the complaint further, use his or her best endeavours to secure such a settlement and assurance.

Findings and
recommendations of
[Privacy
Commissioner]

36.(1) If, on investigating a complaint under this Act, in recommendations in respect of personal information, the [Privacy Commissioner] finds that the complaint is well-founded, the [Commissioner] shall provide the head of the organisation that has control of the personal information with a report containing –

- (a) the terms of any settlement reached by virtue of section 35; or
- (b) the finding of the investigation and any recommendations that the [Commissioner] considers appropriate; and
- (c) where appropriate, a request that, within a time specified therein, notice be given to the [Commissioner] of any action taken or proposed to be taken to implement the terms of settlement or recommendations as the case may be, contained in the report or reasons why no such action has been or is proposed to be taken.

(2) The [Privacy Commissioner] shall, after investigating a complaint under this Act, report to the complainant the results of the investigation, but where a notice has been requested under paragraph (1)(c), no report shall be made under this subsection until the expiration of the time within which the notice is to be given to the [Commissioner].

(3) Where a notice has been requested under paragraph (1)(c) but no such notice is received by the [Commissioner] within the time specified therefore or the action described in the notice is, in the opinion of the [Commissioner], inadequate or inappropriate or will not be taken in a reasonable time, the [Commissioner] shall so advise the complainant in his report under subsection (2) and may include in the report such comments on the matter as he thinks fit.

(4) Where, following the investigation of a complaint, the [Privacy Commissioner] has made recommendations to an organisation under subsection (1), and the decision of the organisation is –

- (a) not to implement the recommendations; or
- (b) to implement the recommendations, but, in the opinion of the [Commissioner], not within a reasonable time or in a manner that is inadequate or inappropriate,

the complainant is entitled to seek judicial review of the decision of the organisation.

Review of
compliance
with certain
provisions

37.(1) The [Privacy Commissioner] may, from time to time at the discretion of the [Commissioner], carry out an investigation in respect of personal information under the control of an organisation to ensure compliance with this Act.

(2) Sections 31 to 34 apply, where appropriate and with such modifications as the circumstances require, in respect of investigations carried out under subsection (1).

(3) If, following an investigation under subsection (1), the [Privacy Commissioner] considers that an organisation has not complied with the provisions of this Act, the [Commissioner] shall provide the head of the organisation with a report containing the findings of the investigation and any recommendations that the [Commissioner] considers appropriate.

(4) Any report made by the *[Privacy Commissioner]* under subsection (3) shall be included in a report made to Parliament pursuant to this Act.

Report to Parliament 38. The *[Privacy Commissioner]* shall, as soon as practicable after the thirty-first of December of each year, prepare a report on the activities of the office under this Act during that year and cause a copy of the report to be laid before Parliament.

Security requirements 39. The *[Privacy Commissioner]* and every person acting on behalf or under the direction of the *[Commissioner]* who receives or obtains information relating to any investigation under this Act or any other Act of Parliament shall, with respect to the use of that information, satisfy any security requirements applicable to, and take any oath of secrecy required to be taken by, persons who normally have access to and use of that information.

Confidentiality 40. Subject to this Act, the *[Privacy Commissioner]* and every person acting on behalf or under the direction of the *[Commissioner]* shall not disclose any information that comes to their knowledge in carrying out duties and performing functions under this Act.

Protection of *[Commissioner]* etc from criminal or civil proceedings 41.(1) Notwithstanding the provisions of section 44, no criminal or civil proceedings lie against the *[Privacy Commissioner]*, or against any person acting on behalf or under the direction of the *[Commissioner]*, for anything done, reported or said in good faith in the course of the exercise, discharge or performance or purported exercise, discharge, or performance of any power, duty or function of the *[Commissioner]* under this Act.

(2) For the purposes of any law relating to libel or slander –

- (a) anything said, any information supplied or any document or thing produced in good faith in the course of an investigation carried out by or on behalf of the *[Privacy Commissioner]* under this Act is privileged; and
- (b) any report made in good faith by the *[Privacy Commissioner]* under this Act is privileged.

Obstruction 42.(1) No person shall obstruct the *[Privacy Commissioner]* or any person acting on behalf or under the direction of the *[Commissioner]* in the discharge and performance the *[Commissioner's]* duties and functions under this Act.

(2) Every person who contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding

PART VI

MISCELLANEOUS

Delegation by head of organisation 43. The head of an organisation may, by order, designate one or more officers or employees of that authority to exercise, discharge or perform any of the power, duties or functions of the head under this Act that are specified in the order.

Regulations 44.(1) The Minister may make regulations for giving effect to the purpose of this Act and for prescribing anything required or authorised by this Act to be prescribed.

(2) Notwithstanding the generality of subsection (1), regulations made under this section may prescribe –

- (a) guidelines for the retention of records for the purposes of section 20(1) and (2);
- (b) guidelines for the disposal of personal information held by an organisation;
- (c) maximum amount of fees payable for access to personal information under this Act; and
- (d) guidelines for information practices of an organisation.

(3) All regulations made under this Act shall be laid before Parliament as soon as may be after the making thereof and shall be subject to [negative/affirmative] resolution.