

Data Protection Questionnaire

BACKGROUND & OBJECTIVE

This Questionnaire has been prepared in connection with the regional activities carried out under the ITU and the HIPCAR project "Enhancing Competiveness in the Caribbean through the Harmonization of ICT Policies, Legislation and Regulatory Procedures" and with Barbados' Data Protection Bill, 2005.

The HIPCAR project has prepared Model Legislative Texts and Model Policy Guidelines for the Caribbean during its first phase, having focused on

- (1) Information Society Issues concerning e-Commerce (Transactions); e-Commerce (Evidence); Privacy and Data Protection; Interception of Communications; Cybercrimes / e-Crimes; and Access to Public Information (Freedom of Information) as well as on
- (2) Telecommunications matters such as Universal Access / Service; Interconnection and Access; and Licensing.

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In this current phase (2), HIPCAR is offering in-country assistance upon request of the beneficiary countries to prepare their national policies and legislation in light of the international best practices contained in the models. The Government of Barbados officially requested the project's support in connection with all 9 work areas listed above. The current assignment deals with one of these areas, namely, Privacy and Data Protection.

Activities for the Government Barbados are spearheaded by the Telecommunications Unit of the Prime Minister's Office and the Ministry of Trade, Commerce and Industry, jointly implemented with the ITU/EU-funded HIPCAR project.

In the so-called Information Society (and especially, in the universe of the Internet), privacy and data protection have become a fundamental element for protection of legitimate interests of individuals and of organizations. For such reason, most countries have enacted specific legislation, enhancing relevant protection. Besides important social concerns, there are strategic economic reasons for establishing and enacting Privacy and Data Protection legislation; for example, the fact that the European Community and other key geographic players forbid trading with businesses located in countries where there is no privacy and data protection legislation in place. Although there are privacy and data protection regulations commonly recognized, there are also accepted margins for countries to adapt such regulations to their own needs. The current task faced by individual countries is, therefore, to align with international best practices, while making local options where applicable. The Questionnaire focuses on such options, allowing Stakeholders to contribute with their views towards "customizing" the Bill in tune with Barbados' goals and environment.

This Questionnaire purports to raise questions that may help the stakeholders to obtain a more complete understanding of the issues and interests to be considered in the process of legislative approval of the Privacy and Data Protection Bill.

QUESTIONNAIRE

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Pos	ition/Title:
1.	Do you agree that the following information should be considered and treated as "sensitive personal data", as established in the Data Protection Bill?
	() Racial or ethnic origin of the individual
	() Political opinions
	() Religious beliefs or other beliefs of a similar nature
	() Membership of any organization whether social, economic or otherwise
	() Physical or mental health
	() Sexual orientation or sexual life
	() Proceedings for any offence committed or alleged to have been committed by a person, the disposal of such proceedings or the sentence of any court in such proceedings
2.	In your view, which information not listed in question 1 above should also be considered as "sensitive personal data" (for instance, biometric data, geo-location data, communications traffic data)?
3.	The additional protection to be given to "sensitive personal data" (vis-à-vis the one to be given to personal data in general) should require, as a condition for its valid disclosure, that the consent by the interested party (the "data subject") is specific/informed and expressed rather than generic/vague or implied (as in the case of personal data in general); do you agree? () Yes () No.
4.	The Bill should define "personal data" only as data which identifies an individual, or also as data which makes an individual identifiable (such as, for instance, password, and IP address?)
	() Only data which can make an individual "identified"
	() Also data which makes the individual "identifiable"
5.	Please select the answer(s) that you support. Should the Bill apply:
	() Only to individuals
	() Also to organizations
	() Only to public bodies
	() Also to private bodies which are hired to perform activities on behalf of public bodies
	() Also to private bodies in general

6.	In general, should data protection duties imposed upon private bodies not performing activities on behalf of public bodies be restricted to protection of "sensitive personal data", while data protection duties imposed upon public bodies (and to private bodies performing activities on behalf of public bodies) should extend to "personal data" in general? In other words, should private bodies be privileged with a general rule of their own privacy, while public bodies are bound to a general rule of transparency? () Yes; () No.
7.	What should be the geographic limits for enforcement of the Bill?
	 () Limited to actions performed in Barbados, or which have an effect in Barbados (ex.: e-mail sent from a computer and respective user located in Barbados, or access of a server in Barbados from a locality abroad);
	 () Also include actions which take place abroad as per instructions or commands from individuals or entities located in Barbados (e.g.: data processing in the "cloud computing" activated by persons located in Barbados);
	() Other(s):
8.	Assuming privacy and data protection mean the right to non-disclosure of information, while freedom of information means the duty to disclose information, should those areas be segregated, by assigning different Commissioners, or should they be handled under a same structure, being assigned to a single Commissioner?
	() Assign to different Commissioners
	() Assign to a single Commissioner
9.	Which Ministry or other public body, if any, should be in charge of the Commissioner's Office, and of relevant appointments and oversight?
	() Parliament
	() Attorney-General
	() National Archives
	() Ombudsman
	() National Standards Bureau
	() Other (please, specify):
10.	In your opinion, should there be a public-private committee especially created for advising the Commissioner (or the public authority in charge of overseeing performance by the Commissioner)? If so, which categories should be represented in that committee?

11.	With respect to consistent compliance with the Bill (for instance, in the context of e-government initiatives), should such standardization be required from public bodies and from private bodies at the same level, or should it be required at a lesser level from private bodies not performing activities on behalf of public bodies?
	() Yes, same level
	() No, lower level
	() No, higher level
12.	Similarly to what has been asked in question 11 above, should there be standardized categories and formats for collection, storage and sharing of personal information? () Yes; () No;
13.	In your opinion, should there be a general duty of warning on security breach of personal information? () Yes, in all cases
	() Yes, as a general rule, subject to exceptions
	() No
14.	In the event of positive response to question 13 above, should the security breach be immediately reported by private bodies not performing activities on behalf of public bodies to the Commissioner and to all interested parties, or should such immediate and general warning be compulsory only when the breach affects "sensitive personal data" (in other words, when the breach does not comprise "sensitive personal data", should the private bodies be required to report immediately only to the Commissioner)?() Yes; () No;
15.	In your opinion, how much time should be given to interested parties for adaptation to the requirements of the Bill after it is enacted as an Act? Should there be some gradual adaptation, with pre-established milestones?
16.	In your opinion, which matters should be left for Regulations (for instance, fees to be charged for provision of certain data, or exemption of such fees), or for codes of practice (for instance, methods of identification of applicants requesting access to personal data, and categories of data to be followed in complying with the Bill, such as health, employment, credit, statistical, archival, and others)
17.	Should the update and correction of personal information under the Bill be required only from public bodies or from private bodies as well?
	() Only from public bodies
	() Also from private bodies

18.	Should appeals against decisions taken by the Commissioner be to which Court?
	() Magistrates Court
	() High Court
	() Court of Appeal
	() Caribbean Court of Justice/Privy Council
19.	In your opinion, should organizations designate an officer ("data controller") to be in charge of coordinating and reporting on compliance with the Bill?
	() Yes
	() Yes, provided it applies only to mid-size and to large organizations (example: above certain number of employees)
	() No;
20.	In your opinion, 30 working days should be the maximum response time for compliance with requests from interested parties?
	() Yes
	()Yes, as a general rule, subject to exceptions
	() Yes, if one extension allowed, in certain circumstances
	() No (please, indicate what time should be assigned)
21.	In your opinion, should requests by interested parties for access to data be free of charge?
	()Yes, in all cases
	() Yes, except in case printed copies or other copies are requested
	() No (please, specify reasons, and indicate which criteria should guide definition on appropriate fees to be charged):

Thank you for completing the Questionnaire.